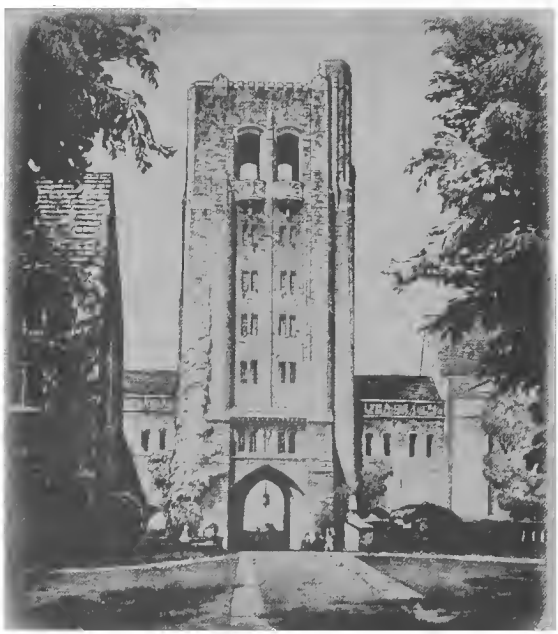

THE

NEGOTIABLE INSTRUMENTS LAW

AS ENACTED BY THE LEGISLATURES OF NEW YORK, CONNECTICUT, COLORADO AND FLORIDA, FROM THE DRAFT PREPARED FOR THE COMMISSIONERS ON UNIFORMITY OF LAWS.

LAWS OF NEW YORK, 1897, CHAPTER 612,
(Being Chapter L of the General Laws)

LAWS OF CONNECTICUT, 1897, CHAPTER 74,
LAWS OF COLORADO, 1897, CHAPTER 239,
LAWS OF FLORIDA, 1897, CHAPTER 4524.

THE FULL TEXT OF THE LAW AS ENACTED, WITH COPIOUS ANNOTATIONS.

BY

JOHN J. CRAWFORD,
Of the New York Bar,

BY WHOM THE STATUTE WAS DRAWN.

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PREFACE.

In 1895 the Conference of Commissioners on Uniformity of Laws, which met that year in Detroit, instructed the Committee on Commercial Law to have prepared a codification of the law relating to bills and notes. The matter was referred to a sub-committee consisting of Lyman D. Brewster, of Connecticut, Henry C. Willcox, of New York, and Frank Bergen, of New Jersey; and I was employed by the sub-committee to draw the proposed law. When completed, the draft, with my notes, was submitted to the sub-committee, who printed it and sent copies to each member of the conference, and also to many prominent lawyers and law professors, and to several English judges and lawyers, with an invitation for suggestions and criticisms. The draft was submitted to the conference which met at Saratoga in August, 1896; and the commissioners who were in attendance, being twenty-seven in all, and representing fourteen different States, went over it section by section, and made some amendments therein, most of which were such changes in the existing law as I had not felt at liberty to incorporate into the original draft. The draft as thus amended was adopted by the conference; and in such form it has been submitted to the legislatures of many of the States. It has been passed, and has become a law in New York, Connecticut, Colorado, and Florida. I am informed that the Commissioners on Uniformity of Laws will make special effort to have it adopted in many other States at the next session of their legislatures.

The text of the law as printed in this edition is that of the New York statute. This is precisely the same as that of the draft published by the Commissioners on Uniformity of Laws, and the statute as passed in Connecticut, Colorado, and Flor-

ida, except that the section numbers have been changed, and section headings introduced, to conform the statute to the plan adopted by the Commissioners of Statutory Revision in their revision of the General Laws, and three sections, viz., 330, 331, and 332, relating to special matters heretofore embodied in other New York statutes, have been added.

In the course of the passage of the bill through the New York Legislature a number of errors were made in the engrossing, and were not detected until too late to be corrected. I have indicated these by asterisks and foot-notes. Probably none of them are of such a character as to affect the meaning, since they are so obviously mistakes.

In submitting this edition of the statute to the public, I embrace this my first opportunity to publicly express my appreciation of the unvarying courtesy and consideration shown me by the Commissioners on Uniformity of Laws, and especially by those composing the sub-committee having the preparation of the bill in charge.

JOHN J. CRAWFORD.

30 BROAD STREET, NEW YORK, July 8, 1897.

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THE NEGOTIABLE INSTRUMENTS LAW.

THE NEGOTIABLE INSTRUMENTS LAW.

Laws of New York, 1897, Chapter 612.
Laws of Connecticut, 1897, Chapter 74.
Laws of Colorado, 1897, Chapter 239.
Laws of Florida, 1897, No. 10, Chapter 4524.

Article I. General provisions. (§§ 1–7.)
II. Form and interpretation of negotiable instruments. (§§ 20–42.)
III. Consideration. (§§ 50–55.)
IV. Negotiation. (§§ 60–80.)
V. Rights of holder. (§§ 90–98.)
VI. Liabilities of parties. (§§ 110–119.)
VII. Presentment for payment. (§§ 130–148.)
VIII. Notice of dishonor. (§§ 160–189.)
IX. Discharge of negotiable instruments. (§§ 200–206.)
X. Bills of exchange; form and interpretation. (§§ 210–215.)
XI. Acceptance. (§§ 220–230.)
XII. Presentment for acceptance. (§§ 240–248.)
XIII. Protest. (§§ 260–268.)
XIV. Acceptance for honor. (§§ 280–290.)
XV. Payment for honor. (§§ 300–306.)
XVI. Bills in a set. (§§ 310–315.)
XVII. Promissory notes and checks. (§§ 320–325.)

XVIII. Notes given for a patent rights and for a speculative consideration. (§§ 330–332.)
XIX. Laws repealed, when to take effect. (§§ 340–341.)

ARTICLE I.

General Provisions.

Section 1. Short title.
2. Definitions and meaning of terms.
3. Person primarily liable on instrument.
4. Reasonable time, what constitutes.
5. Time, how computed; when last day falls on holiday.
6. Application of chapter.
7. Rule of law merchant; when governs.

Section 1. Short title.—This act shall be known as the negotiable instruments law.

The law is confined to negotiable instruments. No attempt is made to deal with instruments which are non-negotiable; and they are not governed by the statute. In determining whether the rules of the statute will apply to any particular instrument, it is first necessary to ascertain whether such instrument is negotiable, according to the terms of the statute. In many instances the rules will be the same for instruments of either kind; but that is not because instruments which are non-negotiable are governed by the statute, but because the statute is a codification of common law rules which before its adoption applied equally to both classes of instruments. In other words, a negotiable instrument is governed by the statute and a non-negotiable instrument by the rules of the common law, though frequently these rules will be the same. For example, if a note drawn payable at a bank contains terms which render it non-negotiable, the provision of section 87, that "where the instrument is made payable at a bank it is equivalent to an order to the bank to pay

the same for the account of the principal debtor thereon," would not apply; but the case would be governed by the rule of the common law, which is the same as the statutory rule in some of the States, but different in others. This distinction must be carefully borne in mind, or much confusion will result.

§ 2. **Definitions and meaning of terms.**—In this act, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form to a person who takes it as a holder

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

§ 3. **Person primarily liable on instrument.**—The person "primarily" liable on an instrument is the person

who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

This section is to be construed in connection with section 37, which provides that "no person is liable on the instrument whose signature does not appear thereon;" and also with section 211, which provides that "the drawee is not liable on the bill unless and until he accepts the same;" and with section 325, which provides that "the bank is not liable to the holder unless and until it accepts or certifies the check." These are not, by the terms of the instrument, absolutely required to pay the same until such acceptance or certification.

§ 4. **Reasonable time, what constitutes.**—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Where the facts are doubtful or disputed, the question of reasonable time is a mixed question of law and fact. But when the facts are clear and undisputed, the question is one of law for the court. Prescott Bank *v.* Coverly, 7 Gray, 217; Northwestern Coal Co. *v.* Bowman, 69 Iowa, 153; Aymar *v.* Beers, 7 Cow. 705; Tomlinson Carriage Co. *v.* Kinsella, 31 Conn. 273.

§ 5. **Time, how computed; when last day falls on holiday.**—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

As to the mode of computing time, see the New York Statutory Construction Law (§§ 26, 27).

§ 6. **Application of chapter.**—The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof.

The time when the statute is to take effect is provided for by section 341. In New York this is October 1st, 1897. But while the law will not go into effect until then, its application is not limited to instruments made after that date. An instrument made and delivered after the passage of the act will be equally within its operation after October 1st. For example, if a note payable four months after date be dated and delivered on July 15th, 1897, it must, at maturity, be presented for payment in the manner prescribed by the statute; and if dishonored, the statutory rules as to giving notice of dishonor must be complied with. But in the case of a note dated and delivered April 15th, 1897, and payable six months after date, none of the provisions of the statute will apply.

§ 7. **Law merchant; when governs.**—In any case not provided for in this act the rules of the law merchant shall govern.

It is to be observed that the rules governing in such cases are not those which existed by virtue of a statute. All prior statutes upon the subject of bills and notes are repealed; and where a case arises which is not provided for in the Negotiable Instruments Law, it is not to be determined by resort to any of the former statutes, but by reference to the rules of the law merchant.

ARTICLE II.

Form and Interpretation.

Section 20. Form of negotiable instrument.
21. Certainty as to sum; what constitutes.
22. When promise is unconditional.
23. Determinable future time; what constitutes.
24. Additional provisions not affecting negotiability.
25. Omissions; seal; particular money.
26. When payable on demand.

Section 27. When payable to order.
28. When payable to bearer.
29. Terms when sufficient.
30. Date of presumption, as to.*
31. Ante-dated and post-dated.
32. When date may be inserted.
33. Blanks, when may be filled.
34. Incomplete instrument not delivered.
35. Delivery; when effectual; when presumed.
36. Construction where instrument is ambiguous.
37. Liability of person signing in trade or assumed name.
38. Signature by agent; authority; how shown.
39. Liability of person signing as agent, et cetera.
40. Signature by procuration; effect of.
41. Effect of indorsement by infant or corporation.
42. Forged signature; effect of.

§ **20. Form of negotiable instrument.**—An instrument to be negotiable must conform to the following requirements:

1. It must be in writing (*a*) and signed by the maker or drawer.

2. Must contain an unconditional promise (*b*) or order to pay a sum certain in money (*c*);

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* The punctuation here is incorrect. There should be a semicolon after the word "of," and the comma after "presumption" should have been omitted. See Preface.

3. Must be payable on demand (*d*), or at a fixed or determinable future time (*e*);

4. Must be payable to order (*f*) or to bearer (*g*); and

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty (*h*).

(*a*) The writing may be in pencil. Brown *v.* Butchers' Bank, 6 Hill, 443.

(*b*) See section 22.

(*c*) This is the rule of the law merchant, and the rule which prevails in most of the States. In some States—as, for example, in Iowa and Georgia—certain instruments are declared by statute to be negotiable, though they provide that payment is to be made in goods or merchandise. See also section 25, subdivision 5. In New York warehouse receipts issued by certain corporations are declared to be negotiable. See Hanover Nat. Bank *v.* American Dock and Trust Co., 148 N. Y. 612; Corn Exchange Bank *v.* Same, 149 N. Y. 174. The act does not repeal these statutes.

(*d*) See section 26.

(*e*) See section 23.

(*f*) See section 27.

(*g*) See section 28.

(*h*) See section 210.

§ 21. **Certainty as to sum; what constitutes.**—The sum payable is a sum certain within the meaning of this act, although it is to be paid:

1. With interest; or

2. By stated instalments (*a*); or

3. By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate (*b*); or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity (*c*).

(*a*) Markey *v.* Corey (Mich.), 61 N. W. Rep. 493; Wright *v.* Irwin, 33 Mich. 32. In this case the note was for $1500, to be paid twenty per cent. a month from the 1st of July, 1871.

(*b*) Second National Bank of Aurora *v.* Basuier, 65 Fed. Rep. 58; Hastings *v.* Thompson (Minn.), 55 N. W. Rep. 968; Flagg *v.* School District (N. D.), 58 N. W. Rep. 499; Whittle *v.* Fond du Lac National Bank (Tex.), 26 S. W. Rep. 1106. *Contra:* Culbertson *v.* Nelson (Iowa), 61 N. W. Rep. 854.

(*c*) As to this point there has been much conflict in the decisions. The rule adopted in the act is the one sustained by the weight of authority. It is supported by National Bank *v.* Sutton Mfg. Co., 6 U. S. App. 312, 331; Oppenheimer *v.* Farmers' and Mechanics' Bank (Tenn.), 36 S. W. Rep. 765; Montgomery *v.* Crossthwait, 90 Ala. 553; Trader *v.* Chichester, 41 Ark. 242; Stapleton *v.* Louisville Banking Co. (Ga.), 23 S. E. Rep. 81; Dorsey *v.* Wolff, 142 Ill. 589; Stoneman *v.* Pyle, 35 Ind. 103; Bank *v.* Marsh (Iowa), 56 N. W. Rep. 458; Seaton *v.* Scoville, 18 Kans. 433; Dietrich *v.* Boylie, 23 La. Ann. 767; Heard *v.* Dubuque Bank, 8 Neb. 10; Stark *v.* Olsen, 44 Neb. 646. The courts which have sustained this rule have taken the view that so long as the amount payable is certain up to the time of maturity and dishonor, it is not essential that after that time, when the instrument has become non-negotiable for other reasons, the certainty as to the amount should continue. In the Tennessee case above cited the court said: "Upon a careful review of the authorities, we can perceive no reason why a note otherwise imbued with all the attributes of negotiability is rendered non-negotiable by a stipulation which is entirely inoperative until after the maturity of the note and its dishonor by the maker. The amount to be paid is certain during the currency of the note as a negotiable instrument, and it only becomes uncertain after it ceases to be negotiable by the default of the maker in its payment. It is eminently just that the creditor who has incurred an expense in the collection of the debt should be reimbursed by the debtor by whom the action was rendered necessary, and the expense entailed." *Contra:* Jones *v.* Rodetz, 27 Minn. 240; First Nat. Bank *v.* Gay, 63 Mo. 38; First Nat. Bank *v.* Bynum, 84 N. C. 24; Woods *v.* North, 84 Pa. St. 407; First Nat. Bank *v.* Larsen, 60 Wis. 206; Sylvester Bukley Co.

v. Alewine (S. C.), 26 S. E. Rep. 609. The question does not appear to have been passed upon by the New York courts.

§ **22. When promise is unconditional.**—An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with :

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount ; (*a*) or

2. A statement of the transaction which gives rise to the instrument (*b*).

But an order or promises to pay out of a particular fund is not unconditional (*c*).

(*a*) The mere mention of a fund in a draft does not necessarily deprive it of the character of commercial paper, but it must further appear, in order to have such effect, that it contains either an express or implied direction to pay it therefrom, and not otherwise. Schmittler *v.* Simon, 101 N. Y. 554, 560. In the case cited, a draft drawn upon an executor contained the words, "and charge the amount against me and of my mother's estate." It was held that the reference to the estate was not a direction to pay out of it, but that the estate was referred to simply as a means of reimbursement. So, in Macleod *v.* Luce, 2 Stra. 762 ; 2 Ld. Raym. 1481, where the instrument contained the words, "as my quarterly half-pay, to be due from 24th of June to 27th of September next, by advance," the court said, "The mentioned of the half-pay is only by way of direction how he shall reimburse himself, but the money is still to be advanced on the credit of the person ;" and the court accordingly held the instrument to be a bill of exchange. Likewise, in Redman *v.* Adams, 51 Me. 433, where the drawer added, "and charge the same against whatever amount may be due me for my share of fish," it was held that these words were a mere indication of the means of reimbursement, and did not destroy the negotiable character of the draft. See also Nichols *v.* Ruggles, 76 Me. 27. The test is whether the drawee is confined to the particular fund, or whether, though a specified fund is mentioned, he could have the power to charge the bill up to the general account of the

drawer, if the desiguated fund should turn out to be insufficient. Munger *v.* Shaunon, 61 N. Y. 251, 255.

(*b*) This occurs most frequently in the case of notes given in payment of the purchase price of goods and chattels. In Mott *v.* Havana Nat. Bank, 22 Hun, 354, it was held that a provision in the note that it was to be "in part payment for a portable engine, which engine shall be and remain the property of the owner of this note until the amount hereby secured is paid," did not render the note non-negotiable. So, where there was a recital in the note that it was "given in consideration of a certain patent right." Hereth *v.* Meyer, 33 Ind. 511. But see section 330.

(*c*) Lowery *v.* Steward, 25 N. Y. 239; Munger *v.* Shannon, 61 N. Y. 251; Parker *v.* City of Syracuse, 31 N. Y. 376; Morton *v.* Naylor, 1 Hill, 583. In the case first cited the order was: "Please pay to the order of Archibald H. Lowery the sum of $500 on account of twenty-four bales cotton shipped to you as per bill of lading, by steamer Colorado, inclosed to you in letter." It was held that this was not a bill of exchange, requiring acceptance to bind the drawers, but a specific draft or order upon a particular fund.

§ 23. Determinable future time; what constitutes.—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; (*a*) or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain (*b*).

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect (*c*).

(*a*) In such a case the legal rights of a holder are clear and certain; the note is due at a time fixed, and it is not due before.

The option of the maker if exercised would be a payment in advance of the legal liability to pay, and nothing more. See Mattison *v.* Marks, 31 Mich. 421; Smith *v.* Ellis, 29 Me. 422; Buchanan *v.* Wren (Tex.), 30 S. W. Rep. 1077; Riker *v.* Sprague Mfg. Co. 14 R. I. 402; Kiskadden *v.* Allen, 7 Colorado, 206; Jordan *v.* Tate, 19 Ohio St. 586; First Nat. Bank *v.* Skeen, 29 Mo. App. 115.

(*b*) Thus, a note payable a certain number of days after the death of the maker, or upon demand after the death of the maker, is a good promissory note, because the event is sure to happen. Cortright *v.* Gray, 127 N. Y. 92; Hegeman *v.* Moon, 131 N. Y. 462. See also Shaw *v.* Camp, 160 Ill. 425; Martin *v.* Stone (N. H.), 29 Atl. Rep. 845; Price *v.* Jones, 105 Ind. 544; Bristol *v.* Warner, 19 Conn. 74. But an instrument payable when, or in so many days after, "A shall become of age," would not be negotiable, because it is uncertain whether A will live so long. Goss *v.* Nelson, 1 Burr, 226.

(*c*) Duffield *v.* Johnston, 95 N. Y. 369; First National Bank *v.* Alton, 60 Conn. 402. Thus, where an instrument is made payable when a certain person shall become of age, the fact that he actually attains his majority does not make the instrument negotiable. Goss *v.* Nelson, 1 Burr, 226.

§ 24. Additional provisions not affecting negotiability.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity (*a*); or

2. Authorizes a confession of judgment if the instrument be not paid at maturity (*b*); or

3. Waives the benefit of any law intended for the advantage or protection of the obligor (*c*); or

4. Gives the holder an election to require something to be done in lieu of payment of money (*d*).

But nothing in this section shall validate any provision or stipulation otherwise illegal (*e*).

(*a*) Collateral notes are often non-negotiable because of some provision therein in regard to the time of payment, or because of provisions requiring something to be done in addition to the payment of money. But a provision merely authorizing the sale of the collateral, if the note be dishonored, does not have this effect. Perry *v.* Bigelow, 128 Mass. 129; Biegler *v.* Merchants' Loan & Trust Co., 62 Ill. App. 560.

(*b*) This provision was inserted in the act to meet the requirements in some of the States where judgment notes are in use. Such notes are not known in New York.

(*c*) In some of the States it is a common practice to insert in promissory notes a waiver of the benefits of homestead and exemption laws; and this provision of the act is designed to meet such cases.

(*d*) An illustration of this case is the right of the holder to elect to take stock of a corporation in lieu of payment in money. Hodges *v.* Shuler, 22 N. Y. 114. As the obligation of the maker is to pay in money, and as the payment in stock is not optional with him, the note is not within the rule that a negotiable instrument must not be payable in the alternative.—*Id.*

(*e*) The object of this provision is to prevent any inference of an intent to validate any agreement or stipulation mentioned in the section, where by any statute or settled policy of the State the same would be illegal.

§ 25. **Omissions; seal; particular money.**—The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated (*a*); or

2. Does not specify the value given, or that any value has been given therefor (*b*); or

3. Does not specify the place where it is drawn or the place where it is payable (*c*); or

4. Bears a seal (*d*); or

5. Designates a particular kind of current money in which payment is to be made (*e*).

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument (*f*).

(*a*) See section 36, which provides that "where the instrument is not dated, it will be considered to be dated as of the time it was issued."

(*b*) The words "value received" are not necessary. Daniel on Negotiable Instruments, § 108.

(*c*) See sections 22, 54, 137.

(*d*) In two late cases in the Court of Appeals of New York it was held that the commercial paper of a corporation does not lose the quality of negotiability by having attached thereto the corporate seal. Chase Nat. Bank *v.* Faurot, 149 N. Y. 532; Weeks *v.* Esler, 143 N. Y. 374. See also Mackay *v.* St. Mary's Church, 15 R. I. 121. The same rule has been applied to municipal bonds under seal. Bank of Rome *v.* Village of Rome, 19 N. Y. 20; Mercer County *v.* Hacket, 1 Wall. 83. And to the bonds of private corporations. Brainerd *v.* N. Y. & H. R. R. Co., 25 N. Y. 496. So it has been held that the negotiability of a United States treasury note is not restrained or affected by the fact that it is under the treasury seal. Dinsmore *v.* Duncan, 57 N. Y. 573. In Mercer County *v.* Hacket, *supra*, it was said by Justice Geier, speaking of bonds issued under seal: "But there is nothing immoral or contrary to good policy in making them negotiable if the necessities of commerce require that they should be so. A mere technical dogma of the courts or the common law cannot prohibit the commercial world from inventing or issuing any species of security not known in the last century." See also Mason *v.* Frick, 105 Pa. St. 162 and cases cited; Morris Canal, etc., Co. *v.* Fisher, 9 N. J. Eq. 699; National Exchange Bank *v.* Hartford, P. & F. R. Co., 8 R. I. 375. The rule adopted in the act already exists by statute in the following States: Colorado, Florida, Georgia, Illinois, Kansas, Massachusetts, Nebraska, North Carolina, Ohio, and Tennessee.

(*e*) Thus, a note payable in gold coin is negotiable. Chrysler *v.* Griswold, 43 N. Y. 209. So is a note payable "in bank

notes current in the city of New York." Keith *v.* Jones, 9 Johns. 120. And a note payable "in New York State bills or specie." Judah *v.* Harris, 19 Johns. 144.

(*f*) In a number of the States it is required that notes given in payment of patent rights shall have written on the face thereof "given for a patent right." So there are statutes requiring that what are known as "Bohemian oats" notes shall state the nature of the consideration for which they were given. The above provision is intended to prevent any repeal of such statutes. The New York statutes on the subject have been incorporated into the act. See sections 330, 331.

§ **26. When payable on demand.**—An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight (*a*), or on presentation; or

2. In which no time for payment is expressed (*b*).

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand (*c*).

(*a*) By the law merchant there are some distinctions between instruments payable on demand and those payable at sight; as, for example, in the matter of days of grace. See Daniel on Negotiable Instruments, §§ 617–619, and authorities there cited. The statute abolishes all these distinctions.

(*b*) Messmore *v.* Morrison, 172 Pa. St. 300; James *v.* Brown, 11 Ohio St. 601; Holmes *v.* West, 17 Cal. 623; Porter *v.* Porter, 51 Me. 376; Keyes *v.* Feustomaher, 24 Cal. 329; Bank *v.* Price, 52 Iowa, 530; Libby *v.* Mekelborg, 28 Minn. 38; Roberts *v.* Snow, 28 Neb. 425; Bacon *v.* Page, 1 Conn. 405; Raymond *v.* Sellick, 10 Conn. 485. And the legal intendment that the instrument is payable on demand cannot be changed by parol proof. Roberts *v.* Snow, 28 Neb. 425; Thompson *v.* Ketcham, 8 Johns. 146; Koehning *v.* Muemminghoff, 61 Mo. 403; Self *v.* King, 28 Tex. 552. The words "on demand" may be added without avoiding the instrument. Byles on Bills, 210.

(*c*) Berry *v.* Robinson, 9 Johns. 121; Leavitt *v.* Putnam, 1 Sandf. 199; Bassonhorst *v.* Wilby, 45 Ohio St. 336; Light *v.*

Kingsbury, 50 Mo. 331; Smith *v.* Caro, 9 Oregon, 280. In such cases presentment for payment must be made and notice of dishonor given, as in other instances of instruments payable on demand. Where a note, negotiated before due, is further negotiated after it has been dishonored, the holder takes the legal title, and can maintain a suit upon it in his own name, in the same manner as if he had received it before it was due. French *v.* Jarvis, 29 Conn. 353.

§ 27. **When payable to order.**—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order (*a*). It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or
2. The drawee* or maker (*b*); or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees (*c*); or
6. The holder of an office for the time being (*d*).

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty (*e*).

(*a*) By the rules of the law merchant an instrument payable to a specified person without the addition of the word "order," or other word of similar import, was not negotiable. Byles on Bills, p. 83; Smith *v.* Kendall, 67 R. 123; Maule *v.* Crawford, 14 Hun, 193; Cortwright *v.* Gray, 127 N. Y. 92. The English Bills of Exchange Act provides that "a bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable." But this change in the law was not deemed advantageous and was not adopted.

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* The word "drawee" has been used here through a clerical error. The word in the draft as published by the commissioners on uniformity of laws is "drawer." See Preface.

(*b*) A note payable to the order of the maker is not complete until indorsed by him. Section 320.

(*c*) Illustration: A draft payable to A, B, and C, or either of them, or any two of them.

(*d*) For example, a note payable to three persons as trustees of an incorporated association, *or their successors in office*, is negotiable. Davis *v.* Gore, 6 N. Y. 124.

(*e*) The payee need not be designated by name. If his identity can be ascertained with certainty, it is sufficient. United States *v.* White, 2 Hill, 59; Blackman *v.* Lehman, 63 Ala. 547.

§ 28. **When payable to bearer.**—The instrument is payable to bearer:

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer (*a*); or

3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable (*b*); or

4. When the name of the payee does not purport to be the name of any person (*c*); or

5. When the only or last indorsement is an indorsement in blank.

(*a*) Illustration: Instrument payable to "A. B., or bearer." In such case it is negotiable by delivery, and the indorsement of A. B. is not necessary to pass the title therein. See section 60.

(*b*) Thus a note made payable to the order of the estate of a deceased person is a promissory note with a fictitious payee, and where it has been negotiated by the maker is deemed as against him to be a note payable to bearer. Lewisohn *v.* The Kent & Stanley Co. 87 Hun. 257. But it is essential that the fictitious character of the payee should be known to the person making the instrument so payable. As said by the Court of Appeals of New York, in Shipman *v.* Nat. Bank of Commerce, 126 N. Y. 318, "The maker's intention is the controlling consideration which determines the character of such paper. It cannot be treated as payable to bearer unless the maker knows the payee to be fictitious, and actually intends to make the paper payable to a

fictitious person." Hence, if the maker or drawer supposes the payee to be an actually existing person (as, for instance, where he is induced by fraud to draw the instrument to the order of a fictitious person whom he supposes to exist), the instrument will not be payable to bearer, and no person can acquire the title thereto by delivery. And where the instrument is a check, or a bill or note payable at a bank, the bank cannot charge the same to the account of its customer, since the instrument is not in such case payable to bearer, and the indorsement is a forgery. Shipman *v.* Nat. Bank of Commerce, *supra;* Armstrong *v.* Bank, 46 Ohio St. 412; Chisholm *v.* First Nat. Bank of New York (Tenn.), 39 S. W. Rep. 340; Bank of England *v.* Vagliano [1891], App. Cas. 107. But see Clutton *v.* Attenborough [1895], 2 Q. B. 707.

(*c*) For example, a check payable to "cash" or to "sundries." See Willets *v.* Phœnix Bank, 2 Duer, 121; Mechanics' Bank *v.* Stratton, 2 Keyes, 365.

§ 29. **Terms when sufficient.**—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

As to the construction of ambiguous instruments, see section 36. The writing may be in pencil as well as in ink. Brown *v.* Butchers' Bank, 6 Hill, 443.

§ 30. **Date, presumption as to.**—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

But evidence is admissible, as between the immediate parties, to show a mistake in the date. Cowing *v.* Altman, 71 N. Y. 441. If the date is an impossible one, the law will adopt the nearest day. Thus, if the date is written September 31st, the true date will be deemed to be September 30th. Wagner *v.* Kenner, 2 Rob. (La.) 120.

§ 31. **Ante-dated and post-dated.**—The instrument is not invalid for the reason only that it is ante-dated or

post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

A post-dated bill or check may be negotiated before the day of its date. Brewster *v.* McCardle, 8 Wend. 478; Pasmore *v.* North, 13 East, 517. In the case last cited the payee who had negotiated a post-dated bill died the day before the day of date; but it was held that the indorsee had derived title through such payee, and could recover of the drawer. If, for the purpose of evading the law, a false date is inserted in the instrument, it will be void as to all persons having notice. Serle *v.* Norton, 9 M. & W. 309.

§ 32. **When date may be inserted.**—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly (*a*). The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date (*b*).

(*a*) See next section.

(*b*) Redlich *v.* Doll, 54 N. Y. 238; Page *v.* Monell, 3 Abb. Ct. App. Dec. 433; Mitchell *v.* Culver, 7 Cow. 333.

§ 33. **Blanks; when may be filled.**—Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein (*a*). And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a

prima facie authority to fill it up as such for any amount (*b*). In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiable* to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time (*c*).

(*a*) But while there is an authority to fill up blanks in order to make the instrument complete as such, there is no authority to insert a special agreement not essential to the completeness of the instrument. Weyerhauser *v.* Dunn, 100 N. Y. 150.

(*b*) It is to be observed that this rule applies only where the incomplete instrument has been *delivered*. See next section.

(*c*) If the instrument be used, or the blanks filled up contrary to the agreement or intention of the original parties, the maker is held to any *bona fide* holder for value, upon the principle that where one of two innocent parties must suffer by the fraud or wrong of a third person, the one who put it in the power of such third person to commit the fraud or wrong must bear the loss. The liability of the maker in such case has also, sometimes, been placed upon the principle of estoppel; he, having put his paper in circulation, and thus invited the public to receive it of any one having apparent title, is estopped to urge the actual defect of title against a *bona fide* holder. Redlich *v.* Doll, 54 N. Y. 234, 238. Where one makes and delivers a promissory note, perfect in form, except that a blank is left after the word "at" for the place of payment, there is an implied authority for any *bona fide* holder to fill the blank, and the insertion of a place of payment, and negotiation of the note, contrary to the agreement of the original parties, does not avoid it in the hands of a *bona fide*

* The word "negotiable" has been used here through some clerical error. The word in the draft as published by the commissioners on uniformity of laws is "*negotiated.*" See Preface.

holder for value. (*Id.*) So, one who intrusts another with his blank acceptance is liable to a holder for value, though filled up for a sum exceeding that limited by the acceptor. Van Duzer *v.* Howe, 21 N. Y. 531. But where the amount is left blank in the body of the note, and a sum is indicated in figures in the margin, the amount cannot be filled in for a larger sum than that so indicated. Norwich Bank *v.* Hyde, 13 Conn. 284.

§ 34. **Incomplete instrument not delivered.**—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

A negotiable instrument must be complete and perfect when it is issued, or there must be authority reposed in some one afterward to supply anything needed to make it perfect. Sedgwick *v.* McKim, 53 N. Y. 307, 313 ; Davis Sewing Machine Co. *v.* Best, 105 N. Y. 59, 67. And mere negligence on the part of the person sought be held liable will not be sufficient to entitle the holder to recover of him on the instrument. Baxendale *v.* Bennett, L. R. 3 Q. B. Div. 525. Thus, in the case cited, where a blank acceptance which had been given to one person and returned by him was afterward stolen from the acceptor and another person filled in his own name and negotiated the bill, it was held that there could be no recovery on such acceptance even by a *bona fide* holder for value. Barnwell, L. J., said : "The defendant here has not voluntarily put into any one's hands the means, or part of the means, for committing a crime. But it is said that he had done so through negligence. I confess I think he has been negligent—that is to say, I think if he had had this paper from a third person as a bailee bound to keep it with ordinary care, he would not have done so. But then this negligence is not the proximate or effective cause of the fraud. A crime was necessary for its completion."

§ 35. **Delivery ; when effectual ; when presumed.**—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the

purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed (*a*). And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved (*b*).

(*a*) This rule does not apply in the case of an incomplete instrument completed and negotiated without authority. See section 34.

(*b*) Possession of the instrument is *prima facie* evidence of title. Newcombe *v.* Fox, 1 App. Div. 389.

§ 36. **Construction where instrument is ambiguous.**— Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of

the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued (*a*);

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail (*b*);

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election (*c*);

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser (*d*);

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon (*e*).

(*a*) Knisley *v.* Sampson, 100 Ill. 54.

(*b*) But this rule does not permit of the rejection of any of the printed matter which by any reasonable construction may be reconciled with the written part. Miller *v.* Hannibal & St. Jo. R. R. Co., 90 N. Y. 430; Magee *v.* Lovell, L. R. 9 C. P. 107; Joyce *v.* Realm Ins. Co. L. R., 7 Q. B. 580.

(*c*) Heise *v.* Bumpass, 40 Ark. 547. Where the instrument ran "On demand, I promise to pay A. B., or bearer, the sum of fifteen pounds, value received," and was addressed in the margin to one J. Bell, who wrote upon it, "Accepted, J. Bell," it was considered to be in effect the note of Bell, as it contained a promise to pay, although, in terms, it was an acceptance. Block *v.* Bell, 1 M. & R. 149. Where the instrument was in the following form: "London, August, 5, 1833. Three months after date, I promise to pay Mr. John Bury or order forty-four pounds, eleven shillings, and five pence, value received, John Bury," and was addressed in the lower left-hand corner "J. B. Grutherot, 35 Montague Place, Bedford Place," and Grutherot's

name was written across the face as an acceptance, and Bury's name across the back as an indorsement, it was held that Bury might be held either as the drawer of the bill against Grutherot, or as the maker of the note, and therefore was bound without notice of dishonor. Edis *v.* Bury, 6 Barn. & Cres. 433. In another case the instrument ran: "Two months after date, I promise to pay A. B. or order, ninety-nine pounds, H. Oliver," and was addressed to J. E. Oliver and accepted by him. The court said: "It is not unjust to presume that it was drawn in this form for the purpose of suing upon it either as a promissory note or as a bill of exchange." Lloyd *v.* Oliver, 18 Q. B. 471.

(*d*) For example, if a person should write his name across the face of a note, he would under this provision be deemed an indorser. There are some decisions which hold that in such case he would be deemed a joint maker. It is, perhaps, not very important which view is adopted, so that the rule upon the subject is fixed and certain. Throughout the act it has been the policy to make all irregular parties indorsers. See section 114.

(*e*) Monson *v.* Drakeley, 40 Conn. 559.

§ 37. **Liability of person signing in trade or assumed name.**—No person is liable on the instrument whose signature does not appear thereon (*a*), except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name (*b*).

(*a*) Persons dealing with negotiable instruments are presumed to take them on the credit of the parties whose names appear upon them, and a person not a party cannot be charged upon proof that the ostensible party signed or indorsed as his agent. Manufacturers' Etc. Bank *v.* Love, 13 App. Div. 561; Briggs *v.* Partridge, 64 N. Y. 363.

(*b*) A person may become a party to a bill or note by any mark or designation he chooses to adopt, provided it be used as a substitute for his name and he intends to be bound by it. De Witt *v.* Walton, 9 N. Y. 574; Brown *v.* Butchers' & Drovers' Bank, 6 Hill, 443.

§ 38. **Signature by agent; authority; how shown.**—The

signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

§ 39. **Liability of person signing as agent, etc.**—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

In the original draft submitted to the Conference of Commissioners on Uniformity of Laws this section read as follows: "Where a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument; but the mere addition of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. In determining whether a signature is that of the principal or of the agent by whose hand it is written, that construction is to be adopted which is most favorable to the validity of the instrument." This is the English rule, and was the rule in New York prior to the statute. Under that rule a person signing for or on behalf of a principal was not liable *on the instrument*, notwithstanding he had no authority to bind his principal. There was an implied warranty on his part that he possessed such authority, and if he did not, he became liable upon such warranty for the damages resulting from the breach. Miller *v.* Reynolds, 92 Hun, 400. But no action could be maintained against him on the instrument when by its terms it did not purport to bind him. And his liability upon the implied warranty did not accompany the transfer of the instrument, unless the claim founded upon the warranty was also assigned to the person to whom the instrument was transferred. (*Id.*) The effect of the section,

as it now stands, is to permit the holder to sue the agent on the instrument, if he was not duly authorized to sign the same on behalf of the principal.

Where a negotiable promissory note has been given for the payment of a debt contracted by a corporation, and the language of the promise does not disclose the corporate obligation, and the signatures to the paper are in the names of individuals, a holder, taking *bona fide* and without notice of the circumstances of its making, is entitled to hold the note as the personal undertaking of its signers, notwithstanding they affix to their names the title of an office. Such an affix will be regarded as descriptive of the persons, and not of the character of the liability. Unless the promise purports to be by the corporation, it is that of the persons who subscribe to it; and the fact of adding to their names an abbreviation of some official title has no legal signification as qualifying their obligation, and imposes no obligation upon the corporation whose officers they may be. This rule is founded on the general principle that in a contract every material thing must be definitely expressed, and not left to conjecture. Unless the language creates, or fairly implies, the undertaking of the corporation, or if the purpose is equivocal, the obligation is that of its apparent makers. Casco National Bank *v.* Clark, 139 N. Y. 307, 310; First Nat. Bank *v.* Wallis, 150 N. Y. 455.

§ 40. **Signature by procuration; effect of.**—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority (*a*).

(*a*) The words "per procuration" have a special technical significance. They are an express intimation of a special and limited authority; and a person taking a bill so drawn, accepted, or indorsed, is bound to inquire into the extent of the authority. Byles on Bills, 33. But an indorsement by an agent "per pro" which is within the powers conferred upon him is binding upon his principal as against *bona fide* holders for value, though the agent abused his authority. Bryant *v.* La Banque du Peuple [1893],

App. Cases, 170. The term is seldom, if ever, used in this country.

§ 41. **Effect of indorsement by infant or corporation.**—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon (*a*).

(*a*) Thus, if a note should be drawn payable to the order of a corporation, and the corporation should indorse the same without consideration, such indorsement would pass the title to a subsequent holder with notice of the facts, though the corporation would not be liable to him as an indorser. See note to section 55.

§ 42. **Forged signature; effect of.**—Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature (*a*), unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority (*b*).

(*a*) Buckley *v.* Second Nat. Bank of Jersey City, 35 N. J. Law, 400.

(*b*) Where the transaction is contrary to good faith and the fraud affects individual interests only, ratification is allowed; but where the fraud is of such a character as to involve a crime the adjustment of which is forbidden by public policy, the ratification of the act from which it springs is not permitted. Forgery does not admit of ratification. A forger does not act on behalf of, nor profess to represent, the person whose handwriting he counterfeits; and the subsequent adoption of the instrument cannot supply the authority which the forger did not profess to have. Henry Christian Building and Loan Association *v.* Walton (Pa.), 37 Atl. Rep. 261; Lyson *v.* Phillips, 106 Pa. St. 57. But cases sometimes arise where parties are estopped to dispute the

genuineness of their signatures. Thus, where a customer has been guilty of negligence in examining the account and vouchers returned to him by his bank, he will not be permitted to dispute the account because some of the checks are forgeries. Leather Manufacturers' Nat. Bank *v.* Morgan, 117 U. S. 96. Where one whose name has been forged to a note has received no benefit from the forgery, and the forger was not his agent for any purpose, he is not bound, as a matter of legal duty, when the note is first shown to him, to repudiate or disclaim at once the genuineness of the signature. His failure to do so is evidence, in the nature of an admission, which may be considered as bearing upon the question whether he assumed the signature as his own, but it is not conclusive. Traders' National Bank *v.* Rogers (Mass.), 45 N. E. Rep. 923. As to what conduct will amount to an estoppel, see Terry *v.* Bissell, 26 Conn. 41.

ARTICLE III.

Consideration of Negotiable Instruments.

Section 50. Presumption of consideration.
51. What constitutes consideration.
52. What constitutes holder for value.
53. When lien on instrument constitutes holder for value.
54. Effect of want of consideration.
55. Liability of accommodation indorser.

§ **50. Presumption of consideration.**—Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

The statute makes this rule applicable only to instruments which are negotiable. But by the law merchant a bill of exchange, though it lacks the words payable "to order," or to "bearer," which are essential to negotiability (see sections 20,

210), imports a consideration. Louisville R. R. Co. *v.* Caldwell, 98 Ind. 251 ; Cowan *v.* Hallock, 9 Colo. 576. The statute has not altered this rule. (See section 7.) But as regards the presumption of consideration in the case of non-negotiable notes, the law of New York and of some of the other States has been changed. See note to section 320.

§ 51. **Consideration, what constitutes.**—Value is any consideration sufficient to support a simple contract (*a*). An antecedent or pre-existing debt constitutes value ; and is deemed such whether the instrument is payable on demand or at a future time (*b*).

(*a*) See Conover *v.* Stillwell, 34 N. J. Law, 54.

(*b*) This section makes an important change in the law of New York. It abolishes the rule in the leading case of Coddington *v.* Bay, 20 Johns. 637, and the numerous cases based upon that decision. The general rule is that where a conveyance is made or security taken, the consideration of which is an antecedent debt, the grantee or the person taking the security is not regarded as a purchaser for a valuable consideration. People's Savings Bank *v.* Bates, 120 U. S. 556, 565 ; Weaver *v.* Borden, 49 N. Y. 286 ; Cary *v.* White, 52 N. Y. 138 ; Wood *v.* Robinson, 22 N. Y. 567 ; Eaton *v.* Davidson, 46 Ohio St. 355 ; Mingus *v.* Condit, 23 N. J. Eq. 313. But in the Supreme Court of the United States, and in many of the State courts, a distinction has been made in favor of commercial paper, and the rule adopted that a *bona fide* holder taking a negotiable instrument in payment of, or as security for an antecedent debt, is a holder for a valuable consideration entitled to protection against all the equities between the antecedent parties. Railroad Company *v.* National Bank, 102 U. S. 14 ; Swift *v.* Tyson, 16 Pet. 1 ; Harrold *v.* Kays, 64 Mich. 439 ; Fitzgerald *v.* Booker, 96 Mo. 661 ; Spencer *v.* Sloan, 108 Ind. 183 ; Quinn *v.* Hoord, 43 Vt. 375 ; Armour *v.* McMichael, 36 N. J. Law, 92 ; Fisher *v.* Fisher, 98 Mass. 303 ; Roberts *v.* Hall, 37 Conn. 205 ; Giovanovich *v.* Citizens' Bank, 26 La. Ann. 15 ; Maitland *v.* Citizens' Nat. Bank, 40 Md. 540 ; Robins *v.* Lair, 31 Iowa, 9 ; Bonaud *v.* Genesi, 42 Ga. 639. In the case of Railroad Company *v.* National Bank, *supra*, the subject was exhaustively examined by the Supreme Court of

the United States, and the rule laid down that the transfer before maturity of negotiable paper as security for an antecedent debt merely, without other circumstances, if the paper be so indorsed that the holder becomes a party to the instrument, although the contract is without express agreement by the creditor for an indulgence, is not an improper use of such paper, and is as much in the usual course of business as its transfer in payment of such debt; and that in either case the *bona fide* holder is unaffected by equities or defenses between prior parties of which he had no notice. This exception to the general rule is based upon considerations of commercial policy, and is peculiar to commercial paper. Prior to the adoption of the statute, the New York rule was well settled that a pre-existing debt was not sufficient to constitute one a holder for value. Comstock *v.* Hier, 73 N. Y. 269; McBride *v.* Farmers' Bank, 26 N. Y. 450; Coddington *v.* Bay, 20 Johns. 637. This rule produced many subtle refinements, and it would be impossible to reconcile all the decisions of the New York courts on the subject.

§ 52. What constitutes holder for value.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

If a party becomes a *bona fide* holder for value of a bill before its acceptance, it is not essential to his right to enforce it against a subsequent acceptor, that an additional consideration should proceed from him to the drawee. The bill itself implies a representation by the drawer that the drawee is already in receipt of funds to pay, and his contract is that the drawee shall accept and pay according to the terms of the draft. The drawee can of course upon presentment refuse to accept, and in that event the only recourse of the holder is against the prior parties thereto; but in case the drawee does accept the bill, he becomes primarily liable for its payment, not only to the indorsees, but also to the drawer himself. Heuertematte *v.* Morris, 101 N. Y. 70.

§ 53. When lien on instrument constitutes holder on* value.—Where the holder has a lien on the instrument,

* This is a clerical error for the word "for." See Preface.

arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Continental Nat. Bank *v.* Bell, 125 N. Y. 38, 42; Rogers *v.* Squires, 98 N. Y. 49. Thus, a bank, having in its possession negotiable securities of its customer, would be, by virtue of its general lien, a holder for value to the extent of the balance due from such customer. So, any person to whom negotiable securities are pledged as collateral would be a holder for value to the extent of the amount due to him. But if such securities should be sold to pay such balance or debt, the purchaser, if a holder in due course within section 911, though he should pay less than their face value for them, could enforce them for the full amount thereof. See section 96.

§ 54. **Effect of want of consideration.**—Absence or failure of consideration is matter of defense as against any person not a holder in due course (*a*); and partial failure of consideration is a defense *pro tanto*, whether the failure is an ascertained and liquidated amount or otherwise (*b*).

(*a*) The right to interpose the defense of want of consideration is governed by the *lex loci*. Herdic *v.* Roessler, 109 N. Y. 127, 133, 134. Upon an exchange of promissory notes, each note is a valid consideration for the other, and is fully available in the hands of the holder; and the fact that one of the notes is not paid at maturity does not sustain a defense of failure of consideration in an action upon the other. Rice *v.* Grange, 131 N. Y. 149.

(*b*) The rule, both in this country and in England, has been that whenever the defendant is entitled to go into the question of consideration, he may set up the partial, as well as the total, want of consideration. Daniel on Negotiable Instruments, § 210. But it has been held in some cases that the part alleged to have failed must be distinct and definite, for only a total failure or the failure of a specific and ascertained part can be availed of by way of defense; and in the case of an unliquidated claim the party must resort to his cross action. Pulsifer *v.* Hotchkiss, 12 Conn. 234;

Drew *v.* Towle, 7 Fost. 412 ; Moggridge *v.* Jones, 14 East. 485 ; Trickey *v.* Larne, 6 M. & W. 278. *Contra:* Wyckhoff *v.* Runyon, 33 N. J. Law, 107. As to what is necessary to constitute one a holder in due course, see sections 52–56.

§ 55. Liability of accommodation indorser.*—An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person (*a*). Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party (*b*).

(*a*) This does not apply to corporations, which, as a general rule, are without power to bind themselves as accommodation parties. A national bank has no such power, National Bank of Commerce *v.* Atkinson, 55 Fed. Rep. 465, 27 U. S. App. 88 ; nor has a State bank, The Bank of Genesee *v.* The Patchin Bank, 13 N. Y. 309 ; Farmers' & Mechanics' Bank *v.* Butchers' & Drovers' Bank, 16 N. Y. 125, 128 ; Morford *v.* The Farmers' Bank of Saratoga County, 26 Barb. 568 ; nor a manufacturing corporation, The Central Bank *v.* The Empire Stone Dressing Co., 26 Barb. 23 ; The Bridgeport City Bank *v.* The Empire Stone Dressing Co., 30 Barb. 421 ; The Farmers' & Mechanics' Bank *v.* The Empire Stone Dressing Co., 5 Bosw. 275 ; Wahlig *v.* The Standard Pump Manufacturing Co., 25 N. Y. St. Repr. 864 ; Filon *v.* The Miller Brewing Co., 38 N. Y. St. Repr. 602 ; Monument National Bank *v.* Globe Works, 101 Mass. 57 ; nor a railroad company, Davis *v.* Old Colony Railroad Company, 131 Mass. 258 ; nor a warehousing and security company, The National Park Bank *v.* G. A. M. W. & S. Co., 116 N. Y. 281 ; nor a life insurance company, Ætna National Bank *v.* Charter Oak Life Insurance Company, 50 Conn. 167 ; nor a turnpike company, Hall *v.* Auburn Turnpike Co., 27 Cal. 256 ; nor an oil company,

* This is a clerical error for the word "party." The section is applicable to all accommodation parties. See Preface.

Culver *v.* Reno Real Estate Company, 91 Penn. St. 367. No corporations organized under the statutes of New York are authorized to bind the property of their shareholders by accommodation indorsements. Fox *v.* Rural Home Co., 90 Hun, 365, 367.

(*b*) An accommodation party has the right to determine for himself what use shall be made of the instrument which he signs. He may impose material or immaterial conditions and terms, and no person can enforce the instrument against him who takes it in violation of such terms and conditions and with notice thereof. Benjamin *v.* Rogers, 126 N. Y. 60. Thus, where the defendant indorsed a note upon the condition that it should not be negotiated in New York, assigning as a reason that he did not wish to be sued upon it in this State, it was held, that while the restriction did not seem to be material, yet the diversion was a defense to the indorser as against one who was not a holder for value. United States Nat. Bank *v.* Ewing, 131 N. Y. 506. But see Rogers *v.* Sipley, 35 N. J. Law, 86.

ARTICLE IV.

Negotiation.

Section 60. What constitutes negotiation.
61. Indorsement; how made.
62. Indorsement must be of entire instrument.
63. Kinds of indorsement.
64. Special indorsement; indorsement in blank.
65. Blank indorsement; how changed to special indorsement.
66. When indorsement restrictive.
67. Effect of restrictive indorsement; rights of indorsement.*
68. Qualified indorsement.

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* This is a clerical error. The word should be "indorsee." See Preface.

Section 69. Conditional indorsement.
70. Indorsement of instrument payable to bearer.
71. Indorsement where payable to two or more persons.
72. Effect of instrument drawn or indorsed to a person as cashier.
73. Indorsement where name is misspelled, et cetera.
74. Indorsement in representative capacity.
75. Time of indorsement; presumption.
76. Place of indorsement; presumption.
77. Continuation of negotiable character.
78. Striking out indorsement.
79. Transfer without indorsement; effect of.
80. When prior party may negotiate instrument.

§ 60. **What constitutes negotiation.**—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer (*a*) it is negotiated by delivery; if payable to order (*b*) it is negotiated by the indorsement (*c*) of the holder completed by delivery (*d*).

(*a*) As to what instruments are payable to bearer, see section 28.

(*b*) As to what instruments are payable to order, see section 27.

(*c*) An indorsement is usually written on the back of the instrument, but the place is not essential. If the payee write his name on any part of the instrument, with the intention of indorsing it, that is a sufficient indorsement. Haines *v.* Dubois, 29 N. J. Law, 259.

(*d*) The indorsement alone without delivery conveys no title. Dann *v.* Norris, 24 Conn. 337; Clark *v.* Sigourney, 17 Conn.

520; Middleton *v.* Griffith (N. J.), 31 Atl. Rep. 405; Spencer *v.* Carstarphen, 15 Colo. 445. As between the original parties and others having notice, a conditional delivery, as well as want of consideration, may be shown; and parol evidence that the delivery was conditional, and of the terms of the condition, is not open to the objection of varying or contradicting the written contract. Higgins *v.* Ridgway, 153 N. Y. 130. By the statutes of some of the States, notes made payable to a person named therein or bearer must be indorsed to pass the legal title. Garvin *v.* Wiswell, 83 Ill. 218; Blackman *v.* Lehman, 63 Ala. 547.

§ 61. **Indorsement; how made.**—The indorsement must be written on the instrument itself or upon a paper attached thereto (*a*). The signature of the indorser, without additional words, is a sufficient indorsement.

(*a*) Crosby *v.* Roub, 16 Wis. 616; Folger *v.* Chase, 18 Pick. 63; French *v.* Turner, 15 Ind. 59. The rule as commonly stated is, that where there is not room on the bill, the indorsement may be on an allonge. But it is not necessary that there should be a physical impossibility of writing the indorsement on the instrument itself; it may be on an allonge, whenever the necessity or convenience of the parties requires it. (See cases above cited.) Besides, any such statement of the rule would give rise to a question of fact which might be determined variously.

§ 62. **Indorsement must be of entire instrument.**—The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument (*a*). But where the instrument has been paid in part, it may be indorsed as to the residue.

(*a*) For example, where a note for $500 was indorsed, "Pay to L. four hundred dollars out of this note," it was held that L. could not recover such amount from the maker. Lindsay *v.*

Price, 33 Tex. 282. Where two indorsements for parts of the amount were made, they were held invalid, though together they purported to transfer the whole. Hughes *v.* Kiddell, 2 Bay (Del.) 324.

§ 63. **Kinds of indorsement.**—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

§ 64. **Special indorsement; indorsement in blank.**—A special indorsement specifies the person to whom, or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery (*a*).

(*a*) See section 28.

§ 65. **Blank indorsement; how changed to special indorsement.**—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement (*a*).

(*a*) Beckwith *v.* Angell, 6 Conn. 317. Thus, he might write over it a special indorsement to himself or to some other person. But he could not write over it a contract of guaranty; for the effect of this would be to deprive the indorser of his right of notice in case of non-payment. Belden *v.* Hann, 61 Iowa, 42. Such a contract would be inconsistent with the character of the indorsement.

§ 66. **When indorsement restrictive.**—An indorsement is restrictive, which either:

1. Prohibits the further negotiation of the instrument (*a*); or

2. Constitutes the indorsee the agent of the indorser (*b*); or

3. Vests the title in the indorsee in trust for or to the use of some other person (*c*).

But the mere absence of words implying power to negotiate does not make an indorsement restrictive (*d*).

(*a*) "Pay Bank of A. only" would be such an indorsement as is meant here.

(*b*) The most frequent instance of this is the indorsement "for collection." Such indorsement does not transfer the title to the indorsee, but constitutes him merely an agent to present the paper, and receive payment thereof for the account of the owner. Commercial National Bank *v.* Armstrong, 148 U. S. 50; National Butchers' and Drovers' Bank *v.* Hubbell, 117 N. Y. 384; Armstrong *v.* National Bank of Boyertown, 90 Ky. 431; Freeman's Bank *v.* National Tube Works, 151 Mass. 413; Sweeney *v.* Easter, 1 Wall. 173; Commercial National Bank *v.* Hamilton National Bank, 42 Fed. Rep. 880; City Bank of Sherman *v.* Weiss, 68 Tex. 332; Central R. R. Co. *v.* First National Bank of Lynchburg, 73 Ga. 384; Bank of Metropolis *v.* First National Bank of Jersey City, 19 Fed. Rep. 658; Blaine *v.* Bourne, 11 R. I. 119; Cecil Bank *v.* Farmers' Bank, 22 Md. 148; Northwestern National Bank *v.* Bank of Commerce, 107 Mo. 402. As to the liability of an indorser to whom the instrument has been indorsed "for collection," see note to section 116.

(*c*) Illustration. Pay A for account of B. In such case the title passes to A; but the indorsement is restrictive to the extent that it gives notice that the instrument cannot be negotiated by A for his own debt or for his own benefit. Hook *v.* Pratt, 78 N. Y. 371, 375.

(*d*) Thus, if the instrument is drawn to the order of A, his indorsement "Pay to B" does not restrict the further negotiation of the instrument, though the words "or order" are not included in the indorsement. See Leavitt *v.* Putnam, 3 N. Y. 494.

§ 67. Effect of restricting * indorsement; rights of in-

* This is a clerical error for "restrictive." See Preface.

dorsee.—A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;

2. To bring any action thereon that the indorser could bring (*a*);

3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

(*a*) This enables a bank to sue in its own name on paper indorsed to it "for collection." As to whether this could be done before the statute there was some conflict in the authorities. The right is sustained by Wilson *v.* Tolson, 79 Ga. 137; Cummings *v.* Kohn, 12 Mo. App. 585; Wintermute *v.* Torrent, 83 Mich. 555. But in Rock County National Bank *v.* Hollister (21 Minn. 385) it was held that the provisions of the Code requiring the action to be brought in the name of the real party in interest would prevent an indorsee to whom the instrument was indorsed "for collection" from maintaining the action.

§ 68. **Qualified indorsement*** constitutes the indorser a mere assignor of the title to the instrument.—It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import (*a*). Such an indorsement does not impair the negotiable character of the instrument (*b*).

(*a*) Cowles *v.* Harts, 3 Conn. 522. But the words employed must clearly indicate that the indorser intends to disclaim liability. Fassin *v.* Hubbard, 55 N. Y. 470. Hence, where the payee writes above his signature an assignment in the following form, "I hereby assign the within note to—" this does not relieve him from liability as an indorser. Markey *v.* Carey (Mich.), 61 M. Rep. 493. The words "without recourse" following the name of the first, and preceding the name of a second, indorser

* The dash and the words "a qualified indorsement" have been omitted here through a clerical error. See Preface.

may, as between them, be shown by parol evidence to apply to the former instead of to the latter. Corbett *v.* Fetzer (Neb.), 66 N. W. Rep. 417.

(*b*) Nor does such an indorsement throw any suspicion upon the character of the paper. Lomax *v.* Picot, 2 Rand. 260.

§ 69. **Conditional indorsement.**—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not (*a*). But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally (*b*).

(*a*) The first sentence is the same as section 33 of the English Bills of Exchange Act with a slight modification. In his note to that section Judge Chalmers says: "This section alters the law. It was formerly held that if a bill was indorsed conditionally, the acceptor paid it at his peril if the condition was not fulfilled. This was hard on him. If he dishonored the bill he might be liable to damages, and yet it might be impossible for him to find out if the condition had been fulfilled." See Daniel on Neg. Inst., sections 697, 698*a*. There appear to be no American cases upon the subject; and the only English case is Robertson *v.* Kensington (4 Taunt. 30).

(*b*) The rule adopted here is somewhat analogous to that which gives to an indorser who has paid a note in part an equitable right *pro tanto* in the proceeds, where the holder afterward collects the whole amount of the note from the maker. See Madison Square Bank *v.* Pierce, 137 N. Y. 444.

§ 70. **Indorsement of instrument payable to bearer.**—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery (*a*); but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

(*a*) See Johnson *v.* Mitchell, 50 Tex. 212; Smith *v.* Clarke, Peake, 225; Daniel on Neg. Inst., Sections 663*a*, 696.

§ 71. **Indorsement where payable to two or more persons.**—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

§ 72. **Effect of instrument drawn or indorsed to a person as cashier.**—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer (*a*).

(*a*) It is common practice for banks to indorse in this manner paper remitted for collection. The rule above stated as to indorsements to cashiers of banks is supported by the following cases: Bank of the State *v.* Muskingum Bank, 29 N. Y. 619; First Nat. Bank *v.* Hall, 44 N. Y. 395; Bank of Genesee *v.* Patchin Bank, 19 N. Y. 312; Folger *v.* Chase, 18 Pick. 63; Farmers' etc. Bank *v.* Troy City Bank, 1 Dough. (Mich.) 457; Watervliet Bank *v.* White, 1 Denio, 608. The commissioners deemed it wise to extend the rule to all fiscal officers of corporations. Under this provision an indorsement to the treasurer of a savings bank would make the paper payable to the bank. So of an indorsement to the secretary of a trust company.

§ 73. **Indorsement where name is misspelled, et cetera.**—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

§ 74. **Indorsement in representative capacity.**—Where any person is under obligation to indorse in a repre-

sentative capacity, he may indorse in such terms as to negative personal liability (*a*).

(*a*) As to the liability of executors and administrators who accept or indorse, see Schmittler *v.* Simon, 101 N. Y. 554.

§ 75. **Time of indorsement; presumption.**—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

This rule is important because that in order to constitute one a holder in due course he must have taken the instrument before it was overdue. See section 91.

§ 76. **Place of indorsement; presumption.**—Except where the contrary appears every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

As an indorsement is not merely a transfer of the instrument, but is a new and substantive contract embodying in itself all the terms of the instrument, the place where it was made often becomes of importance. See Ingalls *v.* Lee, 9 Barb. 947; Brown *v.* Hull, 33 Grat. 27, 29; Smith *v.* Caro, 9 Oregon, 278; Bank of British N. Am. *v.* Ellis, 6 Sawyer, 98; Freese *v.* Brownell, 35 N. J. Law 285. For example, an indorsement in Massachusetts of a note executed and payable in New York is a Massachusetts contract, and governed by the law of that State. Glidden *v.* Chamberlin (Mass.), 46 N. E. Rep. 163.

§ 77. **Continuation of negotiable character.**—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Cumberland Bank *v.* Hann, 3 Harr. (N. J.) 222. As to the discharge of negotiable instruments, see sections 200–206.

§ 78. **Striking out indorsement.**—The holder may at

any time strike out any indorsement which is not necessary to his title (*a*). The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

(*a*) He may strike out all intervening indorsements, and aver that the first blank indorser indorsed immediately to himself. Byles on Bills, 149 ; Preston *v.* Mann, 25 Conn. 127. This may be done at the trial, and after the plaintiff has finished his case. Mayer *v.* Jadis, 1 M. & Rob. 247. See also Morris *v.* Cude, 57 Tex. 337 ; Rand *v.* Dovey, 83 Pa. St. 281 ; Merz *v.* Kaiser, 20 La Ann. 379.

§ 79. **Transfer without indorsement ; effect of.**—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer (*a*). But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made (*b*).

(*a*) Thus, the purchaser of a certified check, payable to order, who obtains title without the indorsement of the payee, holds it subject to all equities between the original parties, although he paid full consideration, without notice. Goshen National Bank *v.* Bingham, 118 N. Y. 349 ; Jenkinson *v.* Wilkinson, 110 N. C. 532. And an intention on the part of the payee and transferee to have the paper indorsed is not sufficient, at least in the absence of an express agreement to indorse. It is the act of indorsement, not the intention, which negotiates the instrument. Goshen National Bank *v.* Bingham, *supra.*

(*b*) An indorsement after notice of a defense, does not relate back to the transfer, so as to cut off intervening rights and remedies. (*Id.*)

§ 80. **When said* party may negotiate instrument.**—

* Error for "prior." See Preface.

Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

ARTICLE V.

Rights of Holder.

Section 90. Right of holder to sue; payment.
91. What constitutes a holder in due course.
92. When person not deemed holder in due course.
93. Notice before full amount paid.
94. When title defective.
95. What constitutes notice of defect.
96. Rights of holder in due course.
97. When subject to original defenses.
98. Who deemed holder in due course.

§ 90. **Right of holder to sue; payment.**—The holder of a negotiable instrument may sue thereon in his own name (*a*); and payment to him in due course discharges the instrument (*b*).

(*a*) This applies to a holder to whom the instrument is indorsed restrictively. See section 67 and note. Where the instrument is payable to bearer, or, if payable to order, is indorsed in blank, possession is sufficient evidence of title on which to maintain the action. Newcomb *v.* Fox, 1 App. Div. 389; Weber *v.* Orton, 91 Mo. 680.

(*b*) The maker of a note, in order to avail himself of the defense of payment before maturity, must show that the indorsee had prior notice of the payment. Yenney *v.* Central City Bank, 44 Neb. 402.

§ 91. What constitutes a holder in due course.—A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face (*a*);

2. That he became the holder of it before it was overdue (*b*), and without notice that it had been previously dishonored, if such was the fact;

3. That he took it in good faith and for value (*c*);

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it (*d*).

(*a*) As to incomplete instruments, and the authority to fill up blanks therein, see section 22.

(*b*) A transfer upon the day of maturity is before the instrument is overdue; for the principal debtor has the whole of that day in which to pay. Continental Nat. Bank *v.* Townsend, 87 N. Y. 8. But see Sargent *v.* Southgate, 5 Pick. 312; Ayer *v.* Hutchins, 4 Mass. 370; Pine *v.* Smith, 11 Gray, 38.

(*c*) As to what will constitute value, see section 51. *Prima facie* value is presumed. See section 50.

(*d*) As to what is necessary to constitute notice, see section 95.

§ 92. When person not deemed holder in due course.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course (*a*).

(*a*) As to what is a reasonable time will depend upon the facts of the particular case. See section 4. No absolute measure can be fixed. A day or two, Field *v.* Nickerson, 13 Mass. 131, 137; seven days, Thurston *v.* McKenn, 6 Mass. 428; and even a month, Ranger *v.* Cory, 1 Metc. 369, is not too long; while eight months, American Bank *v.* Jenness, 2 Metc. 288; Ayres *v.* Hutchins, 4 Mass. 370; Nevins *v.* Townsend, 6 Conn. 7; three months and a half, Stevens *v.* Brice, 21 Pick. 193; and even two months and a half, Losee *v.* Durkin, 7 J. R. 70; and Sice *v.* Cunningham, 1 Cowen, 397, 404, have been deemed sufficient to discredit a note.

§ 93. **Notice before full amount paid.**—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him (*a*).

(*a*) Dresser *v.* Missouri etc. R. R. Construction Co., 93 U. S. 93. The case falls within the general rule that the portion of an unperformed contract which is completed after notice of a fraud is not within the principle which protects a *bona fide* purchaser. (*Id.*)

§ 94. **When title defective.**—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

§ 95. **What constitutes notice of defect.**—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

The holder is not bound at his peril to be on the alert for circumstances which might possibly excite the suspicion of wary vigilance; he does not owe to the party who puts the paper afloat the duty of active inquiry in order to avert the imputation of bad faith. The rights of the holder are to be determined by the simple test of honesty and good faith, and not by a speculative issue as to his diligence or negligence. The holder's rights cannot be defeated without proof of actual notice of the defect in title or bad faith on his part evidenced by circumstances. Though he

may have been negligent in taking the paper, and omitted precautions which a prudent man would have taken, nevertheless, unless he acted *mala fide*, his title, according to settled doctrine, will prevail. Cheever *v.* Pittsburgh, Shenango & Lake Erie R. R. Co., 150 N. Y. 59, 65 ; American Exchange National Bank *v.* New York Belting etc. Co., 148 N. Y. 705 ; Knox *v.* Eden Musee Am. Co., 148 N. Y. 454 ; Canajoharie National Bank *v.* Diefendorf, 123 N. Y. 202 ; Vosburgh *v.* Diefendorf, 119 N. Y. 357 ; Jarvis *v.* Manhattan Beach Co., 148 N. Y. 652 ; Murray *v.* Lardner, 2 Wall. 110 ; Swift *v.* Smith, 102 U. S. 442 ; Belmont *v.* Hoge, 35 N. Y. 65 ; Welsh *v.* Sage, 47 N. Y. 143 ; Nat. Bank of Republic *v.* Young, 41 N. J. Eq. 531 ; Fifth Ward Sav. Bank *v.* First Nat. Bank, 48 N. J. Law, 513 ; Credit Company *v.* Howe Machine Co., 54 Conn. 357 ; Ladd *v.* Franklin, 37 Conn. 64 ; Croft's Appeal, 42 Conn. 154 ; Morton *v.* N. A. & Selma Ry. Co., 79 Ala. 590. While gross carelessness will not, as a matter of law, defeat title in a purchaser for value, it may constitute evidence of bad faith. Canajoharie National Bank *v.* Diefendorf, 123 N. Y. 191. And the payment of value is a circumstance to be taken into account, with other facts, in determining the good faith of the purchaser, but it is not conclusive. Cunningham *v.* Scott, 90 Hun, 410, 411.

The mere fact that the holder for value of a promissory note made by a third party receives it from a person engaged in the note-brokerage business, as collateral security for a loan to such broker, is not sufficient to raise a doubt as to the authority of the broker to so deal with the note. American Ex. Nat. Bank *v.* New York Belting and Packing Company, 148 N. Y. 698. And a bank has a right to assume, as to notes offered to it, whether for discount or as collateral security, by a customer who has an account with it, and who is in the habit of borrowing money from it, that the customer is acting in good faith and within his lawful rights ; and the fact that the customer is engaged in the business of note-brokerage is not enough to deprive the bank of the right to indulge in such assumption. (*Id.*)

One who receives the notes of a corporation from one of its officers, in payment of, or as security for, a personal debt of such officer, does so at his peril. *Prima facie* the act is unlawful, and, unless actually authorized, the purchaser will be deemed to

have taken them with notice of the rights of the corporation. Wilson *v.* Metropolitan Ry. Co., 120 N. Y. 145, 150. And where the maker of a note, which is payable to his order, and purports to be indorsed by a corporation, procures it to be discounted for his own benefit, this of itself, if unexplained, is notice that the indorsement is not made in the usual course of business, but is for the accommodation of the maker. National Park Bank *v.* German-American Mutual Warehousing and Security Company, 116 N. Y. 281.

§ **96. Rights of holder in due course.**—A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof (*a*) against all parties liable thereon.

(*a*) This is the rule of the Supreme Court of the United States. Cromwell *v.* County of Sac, 96 U. S. 60. There is considerable conflict in the decisions of the State courts. In the case cited the Supreme Court said : " We are of opinion that a purchaser of a negotiable security before maturity, in cases where he is not personally chargeable with fraud, is entitled to recover its full amount against its maker, though he may have paid less than its par value, whatever may have been its original infirmity. We are aware of numerous decisions in conflict with this view of the law ; but we think the sounder rule, and the one in consonance with the common understanding and usage of commerce, is that the purchaser, at whatever price, takes the benefit of the entire obligation of the maker. Public securities and those of private corporations are constantly fluctuating in price in the market, one day being above par and the next below it, and often passing within short periods from one half of their nominal to their full value. Indeed, all sales of such securities are made with reference to prices current in the market, and not with reference to their par value. It would introduce, therefore, inconceivable confusion if *bona fide* purchasers in the market were restricted in their claims upon such securities to the sums they had paid for them. This rule in no respect impinges upon the doctrine

that one who makes a loan upon such paper, or takes it as collateral security for a precedent debt, may be limited in his recovery to the amount advanced or secured." See also Birrell *v.* Dickerson, 64 Conn. 61 ; Rowland *v.* Fowler, 47 Conn. 349. The statute changes the rule in New York. Harger *v.* Wilson, 63 Barb. 237 ; Huff *v.* Wagner, 63 Barb. 230 ; Todd *v.* Shelbourne, 8 Hun, 512. See also Holcomb *v.* Wyckoff, 35 N. J. Law, 38 ; Bramhall *v.* Atlantic National Bank, 36 N. J. Law, 243 ; Oppenheimer *v.* Farmers' and Mechanics' Bank (Tenn.), 36 N. W. Rep. 705. For cases where the purchaser has paid only part of the amount agreed to be paid before receiving notice, see section 93.

§ 97. **When subject to original defenses.**—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable (*a*). But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter (*b*).

(*a*) It was not deemed expedient to make provision as to what equities the transferee will be subject to ; for the matter may be affected by the statutes of the various States relating to set-off and counterclaim. On the question whether only such equities may be asserted as attach to the bill, or whether equities arising out of collateral matters may also be asserted, the decisions are conflicting. In an act designed to be uniform in the various States, no more can be done than fix the rights of holders in due course.

A person to whom the instrument is transferred as a gift takes it subject to all equities then existing between the original parties, but not subject to those which arise thereafter. First Nat. Bank of Champlain *v.* Wood, 128 N. Y. 35 ; Baxter *v.* Little, 6 Met. 7.

(*b*) Thus, if A gives to B his note, and C becomes the holder thereof in due course, any subsequent holder could stand on C's title and enforce the note against A, though before taking the same he had notice of a defense which A had to the note as against

B. But if, in the case supposed, the note should be indorsed by C to D, and by the latter to E, and by him to F, under circumstances which would give D a defense as a party thereto, then if F had notice of the equities of both A and D he could enforce the note against A, but not against D.

§ 98. **Who deemed holder in due course.**—Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course (*a*). But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title (*b*).

(*a*) The holder may make out his title by presumption until it is impeached by evidence showing the paper had a fraudulent or illegal inception. When this is done he can no longer rest upon presumption, but it is incumbent upon him to show the circumstances under which it came into his possession, and that he has acted in good faith. Canajoharie National Bank *v.* Diefendorf, 123 N. Y. 191; Joy *v.* Diefendorf, 130 N. Y. 6; Jordan *v.* Grover, 99 Cal. 194; Market and Fulton Nat. Bank *v.* Sargent, 85 Me. 349; Haines *v.* Merrill, 56 N. J. Law, 312. And where the plaintiff seeks to establish this by his own testimony, the credibility of such testimony, though it is undisputed, is for the jury. Joy *v.* Diefendorf, *supra*. Where negotiable securities have been stolen and negotiated, the burden is upon the holder to show that he is himself a holder in due course, or that he claims under such a holder; and there is no presumption that the thief negotiated the securities before they became due. Northampton Nat. Bank *v.* Kidder, 106 N. Y. 221; Hinckley *v.* Merchants' Nat. Bank, 131 Mass. 147.

(*b*) The last sentence is necessary to qualify the general statement. If A issues his note to B, and C gets possession of it and fraudulently negotiates it to D, the fraud of C in nowise affects A, and is no defense to him when sued on the instrument by D.

ARTICLE VI.

Liabilities of Parties.

Section 110. Liability of maker.
111. Liability of drawer.
112. Liability of acceptor.
113. When person deemed indorser.
114. Liability of irregular indorser.
115. Warranty; where negotiation by delivery, et cetera.
116. Liability of general indorsers.
117. Liability of indorser where paper negotiable by delivery.
118. Order in which indorsers are liable.
119. Liability of agent or broker.

§ 110. **Liability of maker.**—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse (*a*).

(*a*) If the payee is a fictitious or non-existing person the instrument is payable to bearer. Section 9. Where the name of the payee is a trade or assumed name, and the instrument is issued for value, the maker is estopped from setting up that the instrument is payable to a fictitious payee, if by such averment the instrument would be defeated. Jones *v.* Home Furnishing Co., 9 App. Div. 103.

§ 111. **Liability of drawer.**—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dis-

honored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

§ 112. **Liability of acceptor.**—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

1. The existence of the drawer, the genuineness of his signature (*a*), and his capacity (*b*) and authority (*c*) to draw the instrument; and

2. The existence of the payee and his then capacity to indorse (*d*).

(*a*) National Park Bank *v.* Ninth National Bank, 46 N. Y. 77; Marine National Bank *v.* National City Bank, 59 N. Y. 67; Bank of St. Albans *v.* Farmers' and Mechanics' Bank, 10 Vt. 141; Bank of U. S. *v.* Bank of Georgia, 10 Wheat. 333.

(*b*) Thus, if the bill is drawn by a corporation, he cannot set up as a defense that it was without legal capacity to draw the bill. Halifax *v.* Lyle, 3 Welsby, H. & G. 446. So, if the bill is drawn by an infant, Jones *v.* Darch, 4 Price, 300; Taylor *v.* Croker, 4 Esp. 187; or a married woman, Cowton *v.* Wickersham, 54 Pa. St. 302.

(*c*) The delivery of a bill or check by one person to another for value implies a representation on the part of the drawer that the drawee is in funds for its payment, and the subsequent acceptance of such check or bill constitutes an admission of the truth of the representation, which the drawer is not allowed to retract. By such acceptance the drawee admits the truth of the representation, and having obtained a suspension of the holder's remedies against the drawer, and an extension of credit by his admission, is not afterward at liberty to controvert the fact as against a *bona fide* holder for value of the bill. Heuertematte *v.* Morris, 101 N. Y. 63, 70.

(*d*) Thus, he would not be permitted to show that the payee

at the time of the acceptance was a lunatic. Smith *v.* Marsack, 6 C. B. 486.

§ **113. When person deemed indorser.**—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity (*a*).

(*a*) See section 36, subdivision 6, and note. There is nothing in either section to preclude a party from assuming liability such as guarantor, etc. Thus, if he were to place above his signature the words, "I guarantee the payment of the within note," he would not be deemed an indorser but a guarantor.

§ **114. Liability of irregular indorser.**—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

This section is intended to cover irregular indorsements. On this subject the decisions are very conflicting. In some jurisdictions a person placing his signature on the back of a note before the payee has indorsed is deemed a joint maker; in other jurisdictions he is regarded as a guarantor; and in still others as an indorser; and those courts which hold him to be an indorser differ as to whether he is a first or second indorser. The cases are too numerous to be cited here. Many of them will be found in Daniel on Negotiable Instruments, sections 707–719. The rule stated above is embodied in part in section 3117 of the Civil

Code of California, which reads: "One who indorses a negotiable instrument before it is delivered to the payee is liable to the payee thereon, as an indorser." The California rule was adopted because it is conducive to certainty, and because it appears to accord more nearly with what must have been the intention of the parties. When a plain man puts his signature on the back of a negotiable instrument he ordinarily understands that he is becoming liable as an indorser; and if he puts it there before the instrument is delivered, he usually does so for the purpose of giving the maker or drawer credit with the payee or other person to whom it is negotiated. In many of the cases the reasoning is highly technical, and the decisions are based upon considerations which, in all probability, never entered the heads of the parties themselves. The California Code makes no provision for a case where the instrument is drawn to the order of the maker or drawer. This is covered by subdivision 2, above. Subdivision 3 was added to provide for a case where, the payee being unable to enforce payment, there might be a question whether the indorser would be liable to a person claiming under the payee. In New York prior to the statute a person indorsing in blank before delivery to the payee was *prima facie* deemed to be a second indorser, and hence not liable to the payee, who was supposed to be the first indorser. Bacon *v.* Burnham, 37 N. Y. 614; Phelps *v.* Vischer, 50 N. Y. 69. But as the paper itself furnished only *prima facie* evidence of this intention, it was competent to rebut the presumption by parol proof that the indorsement was made to give the maker credit with the payee. Coulter *v.* Richmond, 59 N. Y. 478. As the statute fixes the liability in such cases absolutely, parol evidence will hereafter be inadmissible.

ILLUSTRATIONS.

Note made by A payable to order of B, indorsed by C, and afterward delivered to B. C is liable as indorser to B.

Note made by A payable to order of himself, indorsed by B, and afterward delivered to C. B is liable as indorser to C.

Note made by A to order of B, indorsed by C before B, but for accommodation of B, and discounted by Bank of X. C is liable as indorser to Bank of X and not to B.

§ 115. Warranty where negotiation by delivery, et

cetera.—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants;

1. That the instrument is genuine (*a*) and in all respects what it purports to be (*b*);

2. That he has a good title to it (*c*);

3. That all prior parties had capacity to contract (*d*);

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless (*e*).

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes (*f*).

(*a*) Littauer *v.* Goldman, 72 N. Y. 506; Whitney *v.* National Bank of Potsdam, 45 N. Y. 303; Herrick *v.* Whitney, 15 Johns. 240; Canal Bank *v.* Bank of Albany, 1 Hill, 287; Coolidge *v.* Brigham, 5 Metc. 68. But if at the time of the transfer he expressly decline to warrant the genuineness of the instrument no such warranty will be implied. Bell *v.* Dagg, 60 N. Y. 528. But a general refusal to guarantee will not of itself exclude the implied warranty of genuineness. (*Id.*)

(*b*) By the rule of the common law, both in England and in the United States, the doctrine is universally recognized that where commercial paper is sold without indorsement or without express assumption of liability on the paper itself, the contract of sale and the obligations which arise from it, as between vendor and vendee, are governed by the common law relating to the sale of goods and chattels; and the rule is that in such a sale the obligation of the vendor is not restricted to the mere question of forgery *vel non,* but depends upon whether he has delivered that which he contracted to sell, this rule being designated in England, as a condition of the principal contract, as to the essence and substance of the thing to be sold, and in this country being generally termed an implied warranty of the identity of the thing

sold. Meyer *v.* Richards, 163 U. S. 385. In this case the decision of the Court of Appeals of New York in Littauer *v.* Goldman, 72 N. Y. 506, is criticised and disapproved. See also Wood *v.* Sheldon, 42 N. J. Law, 425. But there is no implied warranty by the vendor of a bill that it was drawn against funds or that it was not accommodation paper. People's Bank *v.* Bogart, 81 N. Y. 101; *In re* Hammond, 6 De G. M. & G. 699.

(*c*) Meriden National Bank *v.* Gallaudet, 120 N. Y. 298, 303.

(*d*) Littauer *v.* Goldman, 72 N. Y. 506, 509. One who indorses a promissory note, purporting to be executed by a firm, thereby impliedly contracts that the note was made by the firm in whose name it is executed, and he cannot dispute the fact in an action upon the indorsement. Dalrymple *v.* Hillenbrand, 62 N. Y. 5. So one indorsing the note of a corporation admits its capacity to execute the note. Glidden *v.* Chamberlin (Mass.) 46 N. E. Rep. 163.

(*e*) Where an instrument void for usury is transferred without indorsement and without representation as to legality, an action cannot be sustained against the vendor without alleging and proving *scienter*. Littauer *v.* Goldman, 72 N. Y. 506. But see Wood *v.* Sheldon, 42 N. J. Law, 425, and Meyer *v.* Richards, 163 U. S. 385. And the same rule applies in a case where the principal debtor has become insolvent. Bicknall *v.* Waterman, 5 R. I. 43; Fenn *v.* Harrison, 3 T. R. 757; Fydell *v.* Clark, 1 Esp. 447.

(*f*) Otis *v.* Cullum, 92 U. S. 448. This was an action against the vendor of municipal bonds payable to bearer, which were afterward declared void because the legislature had no power to pass the acts under which they were issued. It was held that no recovery could be had in the absence of an express warranty. The application of the rule of commercial paper in such cases would work great hardship and much public inconvenience.

§ **116. Liability of general indorser.**—Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matter and things mentioned in subdivisions one, two and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting,

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

This section makes an important change in the law. In National Park Bank *v.* Seaboard National Bank, 114 N. Y. 28, the Court of Appeals of New York held that where a bank, which had acted merely as a collecting agent, had paid the proceeds of a check over to its principal, the bank making the payment could not recover from the collecting bank upon subsequently discovering that the check had been raised. In this case the check was presented by the Seaboard Bank through the clearing-house, and does not appear to have been indorsed by that bank; and hence there was no question as to liability of the Seaboard Bank as an indorser. But in the case of United States *v.* American Exchange National Bank, 70 Fed. Rep. 232, the United States District Court for the Southern District of New York, proceeding upon principles similar to those relied upon in the New York case, held that the indorsement of a bank to which paper has been indorsed for collection does not import a guaranty of the genuineness of all prior indorsements, but only of the agent's relation to the principal as stated upon the face of the paper, and that in such case the collecting bank was not liable after it had paid the proceeds to its principal, though a prior indorsement was a forgery. But the statute applies to all indorsers who indorse without qualification; and no exception is made of indorsers to whom the instrument has been indorsed restrictively. Hence a bank indorsing paper forwarded for collection is liable in all respects as an indorser, though the prior indorsement was "for collection" or "for deposit," or otherwise restrictive.

§ 117. Liability of indorser where paper negotiable by delivery.—Where a person places his indorsement on

an instrument negotiable by delivery he incurs all the liabilities of an indorser (*a*).

(*a*) The holder of paper payable to bearer and indorsed may sue upon it as bearer or indorsee at his election. Daniel on Negotiable Instruments, section 663*a*; 3 Kent's Comm. 44. In some of the States a note payable to a designated payee or bearer cannot be negotiated except by the indorsement of such person. See Garvin *v.* Wiswell, 83 Ill. 218; Blackman *v.* Lehman, 63 Ala. 547.

§ 118. **Order in which indorsers are liable.**—As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise (*a*). Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally (*b*).

(*a*) Evidence to show an agreement for a joint liability: Easterly *v.* Barber, 66 N. Y. 433; Phillips *v.* Preston, 5 How. (U. S.) 278; Edelen *v.* White, 6 Bush. 408; *contra* Johnson *v.* Ramsay, 43 N. J. Law, 279. Evidence to show contract that one was to be prior indorser: Slack *v.* Kirk, 67 Pa. St. 380; Reinhart *v.* Schall, 69 Md. 352; Slagel *v.* Rust, 4 Gratt. 274.

(*b*) This provision changes the law. Prior to the statute joint payees who indorsed were liable only jointly. Lane *v.* Stacy, 8 Allen, 41; Daniel on Negotiable Instruments, section 704.

§ 119. **Liability of agent or broker.**—Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section sixty-five* of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

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* This is the number as it appears in the draft as published by the Commissioners on Uniformity of Laws. The corresponding number in the New York Act is 115. See Preface.

Meriden National Bank *v.* Gallaudet, 120 N. Y. 280; Cabot Bank *v.* Morton, 4 Gray, 156; Worthington *v.* Cowles, 12 Mass. 30.

ARTICLE VII.

PRESENTMENT FOR PAYMENT.

Section 130. Effect of want of demand on principal debtor.
131. Presentment where instrument is not payable on demand.
132. What constitutes a sufficient presentment.
133. Place of presentment.
134. Instrument must be exhibited.
135. Presentment where instrument payable at bank.
136. Presentment where principal debtor is dead.
137. Presentment to persons liable as partners.
138. Presentment to joint debtors.
139. When presentment not required to charge the drawer.
140. When presentment not required to charge the indorser.
141. When delay in making presentment is excused.
142. When presentment may be dispensed with.
143. When instrument dishonored by non-payment.
144. Liability of person secondarily liable, when instrument dishonored.
145. Time of maturity.
146. Time; how computed.

Section 147. Rule where instrument payable at bank.
148. What constitutes payment in due course.

§ 130. **Effect of want of demand on principal debtor.**—Presentment for payment is not necessary in order to charge the person primarily * on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part (*a*). But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers (*b*).

(*a*) The rule adopted generally in the United States is that where a note is made payable at a particular bank or other place, or a bill of exchange is drawn or accepted payable in like manner, it is not necessary in order to recover of the maker or acceptor, to aver or prove presentment or demand of payment at such place on the day the instrument became due or afterward. The only consequence of a failure to make such presentment is that the maker or acceptor if he was ready at the time and place to make the payment may plead the matter in bar of damages and costs. Hills *v.* Place, 48 N. Y. 520, 523; Parker *v.* Stroud, 98 N. Y. 379, 384; Cox *v.* National Bank, 100 U. S. 713; Wallace *v.* McConnell, 13 Peters, 136; Lazier *v.* Horan, 55 Iowa, 77; Insurance Company *v.* Wilson, 29 W. Va. 543; Lockwood *v.* Crawford, 18 Conn. 371; Bond *v.* Storrs, 13 Conn. 416.

(*b*) Where a draft is drawn in another State, by one residing there, upon a party residing in this State, any legal question in reference to presentation and demand for payment is to be determined by the laws of this State. Sylvester *v.* Crohan, 138 N. Y. 494; Hibernia Bank *v.* Lacomb, 84 N. Y. 367. The indorser is entitled to demand and notice notwithstanding he holds collateral security. Whitney *v.* Collins, 15 R. I. 44.

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* The word "liable" has been omitted in the New York Act through a clerical error. See Preface.

§ 131. **Presentment where instrument is not payable on demand.**—Where the instrument is not payable on demand, presentment must be made on the day it falls due (*a*). Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof (*b*).

(*a*) As to date of maturity, see section 145.

(*b*) This changes the law of New York, which prior to the statute was, that a promissory note payable on demand is a continuing security, on which an indorser remains liable until an actual demand, and the holder is not chargeable with neglect for omitting to make such demand within any particular time. Merritt *v.* Todd, 23 N. Y. 28; Pardee *v.* Fish, 60 N. Y. 265; Herrick *v.* Woolverton, 41 N. Y. 581; Wheeler *v.* Warner, 47 N. Y. 519; Crim *v.* Starkweather, 88 N. Y. 339; Parker *v.* Stroud, 98 N. Y. 379, 385. The former rule was criticised in some of the later cases. In Connecticut prior to the statute promissory notes payable on demand were required to be presented within four months. Connecticut General Statutes, p. 405. A similar rule exists in California (Civil Code, section 3248), and in Minnesota (Minnesota statutes [1891], section 2104). And in Massachusetts and Vermont demand notes are overdue in sixty days. Paine *v.* Central Vermont R. R. Co., 118 U. S. 152. As to a note payable on demand, "with interest semi-annually," see Hayes *v.* Werner, 45 Conn. 252.

§ 132. **What constitutes a sufficient presentment.**—Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf (*a*);
2. At a reasonable hour on a business day (*b*);
3. At a proper place as herein defined (*c*);
4. To the person primarily liable on the instrument,

or if he is absent or inaccessible, to any person found at the place where the presentment is made (*d*).

(*a*) The mere possession of a negotiable instrument which is payable to the order of the payee, and is indorsed by him in blank, or of a negotiable instrument payable to bearer, is in itself sufficient evidence of the right to present it and to demand payment thereof. Weber *v.* Orton, 91 Mo. 680; Sussex Bank *v.* Baldwin, 2 Harr. (N. J.), 487. And payment to such person will always be valid, unless he is known to the payer to have acquired possession wrongfully. Daniel on Negotiable Instruments, section 574. But the mere possession of an instrument payable to order and not indorsed by the payee is not alone sufficient evidence of the authority of an assumed agent to receive payment. Doubleday *v.* Kress, 50 N. Y. 410.

(*b*) Except in cases where the instrument is payable at a bank, the holder has the whole day in which to present the same, the only limitation being that he must present it at a reasonable hour, and this may depend upon the circumstances of the case. Salt Springs National Bank *v.* Burton, 58 N. Y. 430; Farnsworth *v.* Allen, 4 Gray, 453; Barclay *v.* Bailey, 2 Camp. 527; Wilkins *v.* Jadis, 2 B. & Ad. 188. As late as nine o'clock in the evening has been held to be a reasonable hour. Farnsworth *v.* Allen, 4 Gray, 453. As to when instruments payable at bank must be presented, see section 135.

(*c*) See next section.

(*d*) Cromwell *v.* Hynson, 2 Camp. 596; Phillips *v.* Astberg, 2 Taunt. 206.

§ 133. **Place of presentment.**—Presentment for payment is made at the proper place.

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the

usual place of business or residence of the person to make payment (*a*).

4. In any* case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

(*a*) Gates *v.* Beecher, 60 N. Y. 518, 522 ; Holtz *v.* Boppe, 37 N. Y. 634.

§ 134. **Instrument must be exhibited.**—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it (*a*).

(*a*) Ocean Nat. Bank *v.* Fant, 50 N. Y. 474, 476 ; Smith *v.* Rockwell, 2 Hill, 482 ; Musson *v.* Lake, 4 How. 262 ; Freeman *v.* Boynton, 7 Mass. 483 ; Draper *v.* Clemens, 7 Mo. 52. Demand of payment without actual exhibition of the note is sufficient to bind the indorser where the maker does not demand to see the note but refuses payment for lack of funds. Legg *v.* Viman, 165 Mass. 555. Where the note is secured by collaterals the maker is entitled to require that they be delivered with the note ; and if he insists upon it, they must be tendered with the note or the demand of payment will not be sufficient. Ocean Nat. Bank *v.* Fant, 50 N. Y. 474.

§ 135. **Presentment where instrument payable at bank.**—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient (*a*).

(*a*) See Salt Springs National Bank *v.* Burton, 58 N. Y. 430 ; Bank of Syracuse *v.* Hollister, 17 N. Y. 46 ; Bank of Utica *v.* Smith, 18 Johns. 230 ; Parker *v.* Gordon, 7 East. 387 ; Elford *v.*

* The word "other" has been omitted from the New York statute through some mistake in copying. See Preface.

Teed, 1 Maule & Selw. 28; Garnett *v.* Woodcock, 1 Starkie, 475; Reed *v.* Wilson, 41 N. J. Law, 29. An instrument payable at bank, if not paid, may be put in suit after bank hours on the day of maturity. Blackman *v.* Nearing, 43 Conn. 60. If a note held by a bank at which it is payable is not paid when due, no presentment and demand of payment are necessary. Dykman *v.* Northridge, 1 App. Div. 26. Where a national bank has been placed in the hands of a receiver, paper payable at the bank should be presented at the office of the receiver. Hutchison *v.* Crutcher (Tenn.), 39 S. W. Rep. 725. And presentment there is not excused because he has removed his office and the assets of the bank to another building in the same place.

§ 136. **Presentment where principal debtor is dead.**—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence, he can be found.

§ 137. **Presentment to persons liable as partners.**—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm (*a*).

(*a*) Gates *v.* Beecher, 60 N. Y. 518; Cayuga County Bank *v.* Hunt, 2 Hill, 635; Crowley *v.* Barry, 4 Gill, 194; Fourth Nat. Bank *v.* Henschuk, 52 Mo. 267.

§ 138. **Presentment to joint debtors.**—Where there are several persons not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all (*a*).

(*a*) Gates *v.* Beecher, 60 N. Y. 518, 523; Union Bank *v.* Willis, 8 Metc. 504; Arnold *v.* Dresser, 8 Allen, 435; Willis *v.* Green, 5 Hill, 232; Benedict *v.* Schmieg, 13 Wash. 476. In

some cases this might be impracticable, but such cases are covered by section 142.

§ 139. **When presentment not required to charge the drawer.**—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument (*a*).

(*a*) But presentment is not dispensed with merely because the drawer has no funds in the hands of the drawee. Life Insurance Company *v.* Pendleton, 112 U. S. 708 ; Dickens *v.* Beal, 10 Pet. 572 ; Welch *v.* B. C. Taylor Mfg. Co. 82 Ill. 581 ; Kimball *v.* Bryan, 56 Iowa, 632. It is sufficient if the drawer had a reasonable expectation that the bill would be paid ; or if there was an agreement between him and the drawee that the latter should accept, or a course of dealing between them by which the drawee was accustomed to accept without reference to the state of the mutual accounts. See cases above cited.

§ 140. **When presentment not required to charge the indorser.**—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

§ 141. **When delay in making presentment is excused.**—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence (*a*). When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(*a*) Windham Bank *v.* Norton, 22 Conn. 213 ; Pier *v.* Heinrichsoffen, 67 Mo. 163. In these cases the delay was caused by miscarriage in the mail. See section 176. Where the facts are not disputed the question of due diligence is one of law for the

court; but if there is a dispute as to the facts, the question is for the jury. Belden *v.* Lamb, 17 Conn. 451.

§ 142. When presentment may be dispensed with.—Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made (*a*);

2. Where the drawee is a fictitious person;

3. By waiver of presentment express or implied (*b*).

(*a*) But presentment is not dispensed with by the insolvency of the maker or drawee. Rienke *v.* Wright (Wis.), 67 N. W. Rep. 737; Hawley *v.* Jette, 10 Oregon, 31; Bensonhurst *v.* Wilby, 45 Ohio St. 340; Jackson *v.* Richards, 2 Caines, 343.

(*b*) The waiver may be made either verbally or in writing. It is not necessary that the waiver should be direct and positive. It may result from implication and usage, or from any understanding between the parties which is of a character to satisfy the mind that a waiver is intended. Cady *v.* Bradshaw, 116 N. Y. 188, 191. The assent must be clearly established, however, and will not be inferred from doubtful or equivocal acts or language. Ross *v.* Hurd, 71 N. Y. 14. Where the indorser requests the holder to extend the time of payment and promises to let his name remain upon the instrument, this will amount to a waiver of presentment and notice of non-payment. Cady *v.* Bradshaw, 116 N. Y. 188, 191, 192.

§ 143. When instrument dishonored by non-payment.—The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

§ 144. Liability of person secondarily liable, when instrument dishonored.—Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder (*a*).

(*a*) When the indorser's liability has been fixed by demand and notice of dishonor, he becomes an independent and principal debtor, and does not stand in the position of a mere surety. German-American Bank *v.* Niagara Cycle Co., 13 App. Div. 450 ; First Nat. Bank *v.* Wood, 71 N. Y. 405, 411. Though the holder has received collateral from the maker, the law implies no contract to proceed on the collaterals before suing the indorser. Buck *v.* Freehold Bank, 37 N. J. Law, 307. The section does not change the law as to conditional guaranties, as, for example, a guaranty of the collectibility of the instrument, in which cases there is no right of recourse against the guarantor until the holder has first made proper effort to collect from the principal debtor (Cowles *v.* Peck, 55 Conn. 251 ; Summers *v.* Barrett, 65 Iowa) ; for in such case the terms of the express contract exclude the idea of an intention to incur the liability prescribed by the statute.

§ **145. Time of maturity.**—Every negotiable instrument is payable at the time fixed therein without grace (*a*). When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday (*b*).

(*a*) Besides the States in which the Negotiable Instruments Law has been adopted, days of grace have been abolished in the following States : California, Idaho, Illinois, Maine, Montana, New Jersey, Oregon, Pennsylvania, Utah, Vermont, Wisconsin.

(*b*) Laws of Mass. March 30, 1895, May 28, 1895 ; Laws of Maine, 1897, Ch. 259 ; Laws of New York, 1887, Ch. 289, Ch. 461 ; Laws of Penn. May 31, 1893 ; Laws of U. S. Feb. 18, 1893 ; Laws of N. J. 1895, Ch. 43.

§ **146. Time ; how computed.**—Where the instrument is payable at a fixed period after date, after sight, or

after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment (*a*).

(*a*) See New York Statutory Construction Law, sections 26, 27.

§ 147. **Rule where instrument payable at bank.**— Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon (*a*).

(*a*) There is some conflict in the decisions as to the authority of a bank to pay a note or acceptance made payable there. The rule adopted in the statute is the one sustained by the weight of authority; and is also the rule which is most convenient in practice. It is supported by the following decisions: Ætna Nat. Bank *v.* Fourth Nat. Bank, 46 N. Y. 82; Commercial Bank *v.* Hughes, 17 Wend. 94; Commercial Nat. Bank *v.* Henninger, 105 Pa. St. 496; Bedford Bank *v.* Acoarn, 125 Ind. 582; Home Nat. Bank *v.* Newton, 8 Bradwell, 563; *contra:* Grissom *v.* Commercial Bank, 87 Tenn. 350.

§ 148. **What constitutes payment in due course.**— Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

ARTICLE VIII.

Notice of Dishonor.

Section 160. To whom notice of dishonor must be given.
161. By whom given.
162. Notice given by agent.
163. Effect of notice given on behalf of holder.

Section 164. Effect where notice is given by party entitled thereto.
165. When agent may give notice.
166. When notice sufficient.
167. Form of notice.
168. To whom notice may be given.
169. Notice where party is dead.
170. Notice to partners.
171. Notice to persons jointly liable.
172. Notice to bankrupt.
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186. When notice need not be given to indorser.
187. Notice of non-payment where acceptance refused.
188. Effect of omission to give notice of non-acceptance.
189. When protest need not be made; when must be made.

§ 160. **To whom notice of dishonor must be given.**— Except as herein otherwise provided, when a negotia-

ble instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged (*a*).

(*a*) This rule does not apply to guarantors. Brown *v.* Curtiss, 2 N. Y. 225 ; Allen *v.* Rightmere, 20 Johns. 365 ; Breed *v.* Hillhouse, 7 Conn. 523 ; Roberts *v.* Hawkins, 70 Mich. 566 ; Hungerford *v.* O'Brien, 37 Minn. 306. And proceedings against the maker are necessary only where there is a guaranty of collection. Brown *v.* Curtiss, *supra.*

§ **161. By whom given.**—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given (*a*).

(*a*) Notice by a stranger is not sufficient. Lawrence *v.* Miller, 16 N. Y. 235, 237 ; Chanoine *v.* Fowler, 3 Wend. 173. And a party who has been discharged by laches, and cannot in any event bring an action on the instrument, is deemed a stranger for this purpose. Harrison *v.* Ruscoe, 15 L. J. Exch. 110 ; 15 M. & W. 231. A drawee who refuses acceptance cannot give notice. Stanton *v.* Blossom, 14 Mass. 116.

§ **162. Notice given by agent.**—Notice of dishonor may be given by an agent either in his own name (*a*) or in the name of any party entitled to give notice, whether that party be his principal or not (*b*).

(*a*) Drexler *v.* McGlynn, 99 Cal. 143.

(*b*) Banks as agents for collection have authority to receive and transmit notices on behalf of the owners of the paper. West River Bank *v.* Taylor, 34 N. Y. 128, 130 ; Colt *v.* Noble, 5 Mass. 167 ; Haynes *v.* Birks, 3 Bor. & Pul. 599 ; Robson *v.* Bennett, 2 Taunt. 388. An agent in giving notice represents and acts on

behalf of his principal, and this, though he may be a notary and act in his official character. Lawrence *v.* Miller, 16 N. Y. 235, 238.

§ 163. **Effect of notice given on behalf of holder.**—Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given (*a*).

(*a*) But the holder is not bound to give notice to any one but his immediate indorser. West River Bank *v.* Taylor, 34 N. Y. 128, 131.

§ 164. **Effect where notice is given by party entitled thereto.**—Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

§ 165. **When agent may give notice.**—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

§ 166. **When notice sufficient.**—A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby (*a*).

(*a*) Where the instrument is misdescribed, the fact that there

is no other instrument to which the notice could be applied may be shown by extrinsic evidence. Cayuga County Bank *v.* Worden, 6 N. Y. 19.

§ 167. **Form of notice.**—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment (*a*). It may in all cases be given by delivering it personally or through the mails (*b*).

(*a*) A notice which omits an essential feature of the note, or misdescribes it, is an imperfect one, but not necessarily invalid. It is invalid only where it fails to give that particular information which it would have given but for its particular imperfection ; and even in case the notice in itself be defective, if, from evidence *aliunde* of the attendant circumstances, it is apparent that the indorser was not deceived or misled as to the identity of the dishonored instrument, he will be charged. Hodges *v.* Schuler, 22 N. Y. 114 ; Artisans' Bank *v.* Backus, 36 N. Y. 106 ; Gill *v.* Palmer, 29 Conn. 57 ; Howland *v.* Adrian, 29 N. J. Law, 48. To make the notice defective the variance must be such as that, under the circumstances of the case, it conveys no sufficient knowledge to the indorser of the identity of the particular instrument which has been dishonored. Cayuga County Bank *v.* Worden, 1 N. Y. 413, 417 ; Mills *v.* Bank of U. S., 11 Wheat. 431 ; Bank of Alexandria *v.* Swaim, 9 Peters, 33. The notice is not necessarily defective because it is silent as to the date and time of payment, Youngs *v.* Lee, 12 N. Y. 551, or fails to state that demand of payment was made. Mills *v.* Bank of U. S., 11 Wheat. 431. A note is well described when its maker, payee, date, amount, and time of payment are stated. A printed notice is sufficient, Cuyler *v.* Stevens, 4 Wend. 566 ; Bank of Cooperstown *v.* Woods, 28 N. Y. 545, and the signature of the notary need not be in writing, but may be printed. Bank of Cooperstown *v.* Woods, 28 N. Y. 561 ; Sussex Bank *v.* Baldwin, 2 Harr. (N. J.), 487. But a notice which is barely enough to put the indorser upon inquiry is not sufficient. Cook *v.* Litchfield, 9 N. Y. 279, 281. It must reasonably apprise the party of the particular paper upon which he is sought to be charged.

Home Insurance Co. *v.* Green, 19 N. Y. 518. ; Dodson *v.* Taylor, 56 N. J. Law, 11. In the New York case cited the name of the maker was left blank, and it was held that the notice was not sufficient. The statement that the holder looks for payment to the party to whom notice is sent is not necessary ; for this is implied from the fact of giving notice. Bank of U. S. *v.* Carneal, 2 Peters, 543 ; Mills *v.* Bank, 11 Wheat. 431, 436 ; Nelson *v.* First Nat. Bank (U. S. Circuit Ct. App.), 69 Fed. Rep. 798, 801 ; 16 C. C. A. 425 ; Cowles *v.* Horton, 3 Coun. 523. Where there is no dispute as to the facts, the question of the sufficiency of the notice is a question of law for the court. Cayuga County Bank *v.* Worden, 6 N. Y. 19.

(*b*) In Sheldon *v.* Benham, 4 Hill, 129, decided in 1843, it was held that service of notice of protest could not be made through the mail where the party giving it, and the one to whom it was sent, resided in the same village. But service by mail in such cases was authorized by Laws of New York, 1857, chap. 416.

§ 168. **To whom notice may be given.**—Notice of dishonor may be given either to the party himself or to his agent in that behalf (*a*).

(*a*) Fassin *v.* Hubbard, 55 N. Y. 465, 471 ; Lake Shore National Bank *v.* Butler Colliery Co., 51 Hun, 63, 68.

§ 169. **Notice where party is dead.**—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence, he can be found (*a*). If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased (*b*).

(*a*) Denninger *v.* Miller, 7 App. Div. 409 ; Bank of Port Jefferson *v.* Darling, 91 Hun, 236 ; Dodson *v.* Taylor, 56 N. J. Law, 11 ; Massachusetts Bank *v.* Oliver, 10 Cush. 557 ; Merchants' Bank *v.* Birch, 17 Johns. 24. See also Smalley *v.* Wright, 40 N. J. Law, 471 ; Goodnow *v.* Warren, 122 Mass. 82 ; Bealls *v.* Peck, 12 Barb. 245 ; Cayuga Co. Bank *v.* Bennett, 5 Hill, 236 ; Maspero *v.* Pedesclaux, 22 La. Ann. 227.

(*b*) Goodnow *v.* Warren, 122 Mass. 82 ; Merchants' Bank *v.* Birch, 17 Johns. 25.

§ 170. **Notice to partners.**—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution (*a*).

(*a*) Hubbard *v.* Matthews, 54 N. Y. 43, 50 ; Coster *v.* Thomason, 19 Ala. 717 ; Slocomb *v.* Lizardi, 21 La. Ann. 355 ; Fourth Nat. Bank *v.* Henschuh, 52 Mo. 207.

§ 171. **Notice to persons jointly liable.**—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others (*a*).

(*a*) For the distinction between parties who are partners and joint parties not partners, see Gates *v.* Beecher, 60 N. Y. 518, 526. See also Willis *v.* Green, 5 Hill, 232.

§ 172. **Notice to bankrupt.**—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee (*a*).

(*a*) Callahan *v.* Kentucky Bank, 82 Ky. 231 ; *contra*, House *v.* Vinton Bank, 43 Ohio St. 346.

§ 173. **Time within which notice must be given.**—Notice may be given as soon as the instrument is dishonored (*a*) ; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

(*a*) The holder need not wait until the close of business hours, but may send notice at once. Bank of Alexandria *v.* Swan, 9 Peters, 33 ; Lenox *v.* Roberts, 2 Wheat. 373 ; *ex parte* Moline, 19 Ver. 216.

§ 174. **Where parties reside in same place.**—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following (*a*);

2. If given at his residence, it must be given before the usual hours of rest on the day following (*b*);

3. If sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following (*c*).

(*a*) Adams *v.* Wright, 14 Wis. 408; Cayuga County Bank *v.* Hunt, 2 Hill, 236; Daniel on Neg. Inst., section 1038.

(*b*) Phelps *v.* Stocking, 21 Neb. 444; Darbishire *v.* Parker, 6 East. 8.

(*c*) See note to next section.

§ 175. **Where parties reside in different places.**—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter (*a*).

2. If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision (*b*).

(*a*) In Smith *v.* Poillon, 87 N. Y. 590, 597, Earl, J., said: "From a careful examination of all these authorities and many others, it is clear that the law is not precisely settled. It appears that at first it was supposed to be necessary that notice of

dishonor should be given by the next post after dishonor, on the same day, if there was one. That rule was found inconveniently stringent, and then it was held that when the parties lived in different places, between which there was a mail, the notice could be posted the next day after the dishonor or notice of dishonor. Some of the authorities hold that the party required to give the notice may have the whole of the next day. Some of them hold that when there are several mails on the next day, it is sufficient to send the notice by any post of that day. Other authorities lay down the rule, in general terms, that the notice must be posted by the first practical and convenient mail of the next day ; and that rule seems to be supported by the most authority in this State. What is a practical and convenient mail depends upon circumstances. It may be controlled by the usages of business and the customs of the people at the place of mailing, and the condition, situation and business engagements of the person required to give the notice. The rule should have a reasonable application in every case, and whether sufficient diligence has been used to mail the notice, the facts being undisputed, is a question of law." But see Burgess *v.* Vreeland, 4 Zab. (N. J.), 71 ; Winans *v.* Davis, 3 Harr. (N. J.), 276.

(*b*) Bank of Columbia *v.* Lawrence, 1 Peters, 578 ; Jarvis *v.* St. Croix Mfg. Co., 23 Me. 287.

§ 176. **When sender deemed to have given due notice.**—Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

See Windham Bank *v.* Norton, 22 Conn. 213 ; Pier *v.* Heinrichsoffen, 67 Mo. 163.

§ 177. **Deposit in post-office ; what constitutes.**—Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter-box under the control of the post-office department.

See Nat. Bank *v.* Shaw, 79 Me. 376 ; Pearce *v.* Langfit, 101 Pa. St. 507.

§ 178. **Notice to subsequent party; time of.**—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor (*a*).

(*a*) Howland *v.* Adrian, 29 N. J. Law, 41 ; Howard *v.* Ives, 1 Hill, 263 ; Jameson *v.* Swinton, 2 Taunt. 224 ; Shelburne Falls National Bank *v.* Townley, 102 Mass. 177 ; Seaton *v.* Scovill, 18 Kans. 435 ; Bray *v.* Hadwen, 5 Maule & Sel. 68.

§ 179. **Where notice must be sent.**—Where a party has added an address to his signature, notice of dishonor must be sent to that address (*a*) ; but if he has not given such address, then the notice must be sent as follows :

1. Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters (*b*) ; or

2. If he live in one place, and have his place of business in another, notice may be sent to either place (*c*) ; or

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning (*d*).

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

(*a*) Bartlett *v.* Robinson, 39 N. Y. 187. In this case the indorsement was in the following form : " Chas. Robinson, 214 E. 18th Street." The notice of dishonor sent through the post-office was addressed " Chas. Robinson, Esq., City of New York," and was not received by the indorser. Held, that he was discharged.

(*b*) Bank of Columbia *v.* Lawrence, 1 Peters, 578 ; National

Bank *v.* Cade, 73 Mich. 449 ; Northwestern Coal Co. *v.* Bowman, 69 Iowa, 103.

(*c*) Bank of U. S. *v.* Carneal, 2 Peters, 549 ; Williams *v.* Bank of U. S., 2 Peters, 96 ; Montgomery Co. Bank *v.* Marsh, 7 N. Y. 481.

(*d*) Chouteau *v.* Webster, 6 Metc. 1.

§ **180. Waiver of notice.**—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice (*a*), and the waiver may be express or implied (*b*).

(*a*) If an indorser, with full knowledge of the laches of the holder in neglecting to protest a bill or note, unequivocally assents to continue his liability, or to be responsible, as though due protest had been made, he is held to have waived the right to object, and will stand in the same position as if he had been regularly charged by presentment, demand, and notice. This assent must be clearly established, and will not be inferred from doubtful or equivocal acts or language. It has been frequently held that a promise by the indorser to pay the note or bill, after he has been discharged by the failure to protest it, will bind the indorser, provided he had full knowledge of the laches when the promise was made. A promise made under those circumstances affords the clearest evidence that the indorser does not intend to take advantage of the laches of the holder ; and the law, without any new consideration moving between the parties, gives effect to the promise. The assent of the indorser to be bound, notwithstanding he has not been duly charged, may be established by any transaction between him and the holder, which clearly indicates this purpose and intention. Ross *v.* Hurd, 71 N. Y. 14, 18. But it must appear in such case that the indorser had knowledge of the fact that the holder was in default. Thornton *v.* Wynn, 12 Wheat. 183 ; Hunter *v.* Hook, 64 Barb. 469 ; Gawtry *v.* Doane, 48 Barb. 148 ; Schierl *v.* Baumel, 75 Wis. 75 ; Glaser *v.* Rounds, 16 R. I. 235.

(*b*) A waiver will not be presumed without the most satisfactory proof. Lockwood *v.* Crawford, 18 Conn. 374.

§ **181. Whom affected by waiver.**—Where the waiver

is embodied in the instrument itself, it is binding upon all parties (*a*); but where it is written above the signature of an indorser, it binds him only (*b*).

(*a*) Philips *v.* Dippo (Iowa), 61 N. W. Rep. 216; Smith *v.* Pickham (Tex.), 28 S. W. Rep. 565; Pool *v.* Anderson, 116 Ind. 94; Bryant *v.* Merchants' Bank, 8 Bush, 43.

(*b*) Woodman *v.* Thurston, 8 Cush. 157; Farmers' Bank *v.* Ewing, 78 Ky. 264.

§ **182. Waiver of protest.**—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor (*a*).

(*a*) First Nat. Bank *v.* Falkenham, 94 Cal. 141. While in a strict and technical sense the term protest when used in reference to commercial paper means only the formal declaration drawn up and signed by a notary, yet in a popular sense and as used among men of business it includes all the steps necessary to charge an indorser; and in waiving protest an indorser is supposed to use it in this sense. Coddington *v.* Davis, 1 N. Y. 186, 189–190. But in construing a pleading, a more technical rule will be applied, and an allegation that the instrument was duly protested will not be deemed to comprehend an averment that notice of dishonor was given to the indorser. Cook *v.* Warren, 88 N. Y. 37.

§ **183. When notice is dispensed with.**—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged (*a*).

(*a*) Reasonable diligence is all that is required. The law does not exact every possible exertion which might have been made to effect notice of the dishonor of the paper. Bank of Port Jefferson *v.* Darling, 91 Hun, 236. And what is reasonable diligence will depend upon the circumstances of each case. What would be sufficient in one case might fall short in another.

Howland *v.* Adrian, 29 N. J. Law, 41. And any mode of inquiry will be sufficient which under the circumstances of the case evinces reasonable diligence. Hartford Bank *v.* Stedman, 3 Conn. 494. But bare reliance upon a directory is not sufficient diligence. Bacon *v.* Hanna, 137 N. Y. 379, 382. In the case last cited, the court said : "Merely looking into a directory is not enough. The sources of error in that process are too many and too great. Such books are accurate enough in a general way, and convenient as an aid or assistance, but they are private ventures, created by irresponsible parties, and depending upon information gathered as cheaply as possible and by unknown agents. Their help may be invoked, but, as was said in Lawrence *v.* Miller, 16 N. Y. 231, their error may excuse the notary, but will not charge the defendant. Merely consulting them should not be deemed 'the best information obtained by diligent inquiry.' Greenwich Bank *v.* DeGroot, 7 Hun, 210 ; Baer *v.* Leppert, 12 Hun, 516."

§ 184. **Delay in giving notice ; how excused.**—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

§ 185. **When notice need not be given to drawer.**—Notice of dishonor is not required to be given to the drawer in either of the following cases :

1. Where the drawer and drawee are the same person (*a*) ;

2. Where the drawee is a fictitious person or a person not having capacity to contract ;

3. Where the drawer is the person to whom the instrument is presented for payment ;

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument (*b*) ;

5. Where the drawer has countermanded payment.

(*a*) Roach *v.* Ostler, 1 Man. & Ry. 120 ; Planters' Bank *v.* Evans, 36 Tex. 592 ; Chicago, etc., R. R. Co. *v.* West, 37 Ind. 211.

(*b*) Life Insurance Company *v.* Pendleton, 112 U. S. 708.

§ 186. **When notice need not be given to indorser.**—Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument (*a*);

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation (*b*).

(*a*) See note to section 28.

(*b*) French *v.* Bank of Columbia, 4 Cranch, 141 ; Ross *v.* Bedell, 5 Duer, 462 ; Bleuderman *v.* Price (N. J.), 12 Atl. Rep. 777 ; Torrey *v.* Frost, 40 Me. 74.

§ 187. **Notice of non-payment where acceptance refused.**—Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the mean time the instrument has been accepted (*a*).

(*a*) De la Torre *v.* Barclay, 1 Stark. 308 ; Campbell *v.* French, 6 T. R. 200.

§ 188. **Effect of omission to give notice of non-acceptance.**—An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

§ 189. **When protest need not be made; when must**

be made.—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required, except in the case of foreign bills of exchange (*a*).

(*a*) Bay *v.* Church, 15 Conn. 129. While protest is not necessary, except in case of foreign bills, it is very convenient in all cases, because it affords the easiest and most certain method of proving the fact of dishonor and the notice to the indorsers. Under the statutes of nearly all, if not all of the States, the certificate of the notary making the protest is *prima facie* evidence of these facts. As to what are foreign bills, see section 213. For other provisions relative to protest, see sections 260–268.

ARTICLE IX.

Discharge of Negotiable Instruments.

Section 200. Instrument; how discharged.
201. When person secondarily liable on, discharged.
202. Right of party who discharged instrument.
203. Renunciation by holder.
204. Cancellation; unintentional; burden of proof.
205. Alteration of instrument; effect of.
206. What constitutes a material alteration.

§ 200.—**Instrument; how discharged.***—A negotiable instrument is discharged:

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* Through a clerical error the words in the headnote have been transposed. It was intended to read, "How instrument discharged." See Preface.

1. By payment in due course by or on behalf of the principal debtor (*a*);

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder (*b*);

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right (*c*).

(*a*) A payment made to the holder of a promissory note by an indorser, not as agent for the maker, but simply in discharge of his obligation as indorser, where the note was executed by the maker for value, does not inure to the benefit of the latter, and in an action upon the note he is liable for the whole amount thereof, notwithstanding the payment. Madison Square Bank *v.* Pierce, 137 N. Y. 444. In the case cited it was said : "To the extent of the money paid, the indorser becomes equitably entitled to be substituted to the rights and remedies of the holder, and becomes, *pro tanto*, the beneficial owner of the debt ; so that the maker's obligation to pay the note in full, at first due to the holder solely in his own right, becomes, after the part payment by the indorser, still wholly due to the holder, but partly in his own right and partly as trustee for the indorser. A court of law cannot split the note into parts, and must act upon the legal interest and ownership." For cases where payment made by person secondarily liable, see section 202.

(*b*) See section 204.

(*c*) See section 80.

§ 201. When persons secondarily liable on, discharged. —A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;

2. By the intentional cancellation of his signature by the holder;

3. By the discharge of a prior party (*a*);

4. By a valid tender of payment made by a prior party (*b*).

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved (*c*);

6. By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument (*d*), unless the right of recourse against such party is expressly reserved (*e*).

(*a*) Shutts *v.* Fingar, 100 N. Y. 539; Couch *v.* Waring, 9 Conn. 261; Gennis *v.* Weighley, 114 Pa. St. 194. It is a general rule that whatever discharges the maker or acceptor discharges the drawer and indorser, who are sureties, for the contract which they undertook to assume thus passes out of existence by the act of the beneficiary. And whatever discharges a prior indorser discharges all subsequent indorsers, for the reason that he stood between them and the holder, and on making payment each one could have had recourse against him, but from which his discharge precludes them. The contracts of the parties are said to be like the links of a pendant chain; if the holder dissolves the first, every link falls with it. Shutts *v.* Fingar, *supra.* But this rule, of course, does not apply where a prior party has been discharged by the laches of the intermediate indorser; for the holder need give notice only to his immediate indorser. West River Bank *v.* Taylor, 34 N. Y. 128, 131.

(*b*) Spurgeon *v.* Smiths, 114 Ind. 453.

(*c*) By an express reservation of the holder's rights against the drawer or indorsers, their rights against the maker or acceptor are reserved by implication. Gloucester Bank *v.* Worcester, 10 Pick. 528; Tombeckbe Bank *v.* Stratton, 7 Wend. 429; Stewart *v.* Eden, 2 Cai. 121. An indorser is discharged where the holder has allowed the statute of limitations to run against the maker. Shutts *v.* Fingar, 100 N. Y. 539.

(*d*) Any extension, no matter how short, by a valid agreement, will discharge the indorser or surety. Cary *v.* White, 52 N. Y. 138; Nightingale *v.* Meginnis, 34 N. J. Law, 461. But there

must be an enforcible agreement to this effect, either express or implied. (*Id.*) Ordinarily the taking of a new note from the debtor, payable at a future day, suspends the right of action upon the original demand until the maturity of the new note, and hence discharges a non-assenting surety. Hubbard *v.* Gurney, 64 N. Y. 450 ; Place *v.* McIlvain, 38 N. Y. 960. But when the new security is payable on demand no presumption arises of an agreement. Board of Education *v.* Fonda, 77 N. Y. 350, 362. And where new security is taken merely as collateral, the fact that the collateral may not be enforcible until a definite time in the future does not operate to extend the time of payment of the principal debt or suspend the right to sue on the original security. Falkill National Bank *v.* Sleight, 1 App. Div. 189, 191 ; United States *v.* Hodge, 6 How. (U. S.) 279. Mere indulgence to the maker or acceptor will not discharge a drawer or indorser ; there must be an agreement to extend the time of payment binding upon the holder. Smith *v.* Erwin, 77 N. Y. 466 ; Bank of Utica *v.* Ives, 17 Wend. 501 ; Crawford *v.* Millspaugh, 13 Johns. 87 ; Lockwood *v.* Crawford, 18 Conn. 376. And for this purpose the contract must be supported by a valid consideration. Cary *v.* White, 52 N. Y. 138. A part payment by the maker is not such a consideration, Halliday *v.* Hart, 30 N. Y. 474 ; nor is an agreement to pay interest, since it is merely a promise to do what the party is already bound to do. Wilson *v.* Powers, 130 Mass. 127 ; Stuber *v.* Schack, 83 Ill. 192. An indorser is not discharged by extending the maker's time to answer. German-Am. Bank *v.* Niagara Cycle Co., 13 App. Div. 450.

(*e*) Wagman *v.* Hoag, 14 Barb. 233, 239 ; Rockville National Bank *v.* Holt, 58 Conn. 526 ; Bank *v.* Simpson, 90 N. C. 469 ; Minir *v.* Crawford, L. R. 2 Scotch Appeals, 456 ; Kenworthy *v.* Sawyer, 125 Mass. 28 ; Morse *v.* Huntington, 40 Vt. 488 ; Hagey *v.* Hill, 75 Pa. St. 108.

§ 202. **Right of party who discharges instrument.**— Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties (*a*), and he may strike out his own and

all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated (*b*).

(*a*) French *v.* Jarvis, 29 Conn. 353.

(*b*) Where the instrument is paid by an accommodation acceptor it is discharged, and becomes commercially dead, but is evidence in the hands of the payer to charge the real debtor. First Nat. Bank *v.* Maxfield, 83 Me. 576. So, where one of several accommodation makers pays the note, it remains in his hands evidence of his right to contribution from his co-sureties. This right may be assigned by him, and the delivery of the note by him to a third person for a valuable consideration raises a presumption of an intention to pass this right to the transferee. Dillenbeck *v.* Bygert, 97 N. Y. 303. Where an accommodation indorser for the payee has paid the note he may recover the amount of an accommodation maker. Laubach *v.* Pursell, 35 N. J. Law, 434. And where a second indorser of a note has paid and taken it up he becomes a holder for value, and may maintain an action to recover the amount thereof of the first indorser, although both are accommodation indorsers. Kelly *v.* Burroughs, 102 N. Y. 93. See also Kaschner *v.* Conklin, 40 Conn. 81.

§ 203. **Renunciation by holder.**—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

§ 204. Cancellation; unintentional; burden of proof.—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

§ 205. Alteration of instrument; effect of.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers (*a*). But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor (*b*).

(*a*) The burden of explaining an apparent alteration is upon the party producing the paper. Gowdey *v.* Robbins, 3 App. Div. 353; Town of Solon *v.* Williamsburgh Savings Bank, 114 N. Y. 122, 135; Simpson *v.* Davis, 119 Mass. 269; Gettysburg National Bank *v.* Chisolm, 169 Pa. St. 564.

(*b*) This changes the law. Prior to the statute the rule was that where the alteration was made without the consent of the party sought to be charged, there could be no recovery even by an innocent holder for value, and even though he sought to recover on the instrument as it was before the alteration. Gettysburg National Bank *v.* Chisolm, 169 Pa. St. 564; Hartley *v.* Carboy, 150 Pa. St. 23; Wood *v.* Steele, 6 Wall. 80; Citizens' National Bank *v.* Richmond, 121 Mass. 110. In the case first cited it was said: "In the present case the alteration was not probably made by an agent of the payee, and it was entirely without the knowledge and consent of the defendant, who was the maker of the note. Of course the payee could not recover on the note for any amount, because it was an altered instrument, and is avoided altogether by public policy. Certainly he

could not restore life to it by passing it over to an indorsee." But compare Gleason *v.* Hamilton, 138 N. Y. 353; Town of Solon *v.* Williamsburgh Savings Bank, 114 N. Y. 122, 134.

§ 206. What constitutes a material alteration.—Any alteration which changes:

1. The date (*a*);
2. The sum payable, either for principal (*b*) or interest (*c*);
3. The time (*d*) or place (*e*) of payment,
4. The number or the relations of the parties (*f*);
5. The medium or currency in which payment is to be made (*g*);

Or which adds a place of payment where no place of payment is specified (*h*), or any other change or addition which alters the effect of the instrument in any respect, is a material alteration (*i*).

(*a*) National Ulster County Bank *v.* Madden, 114 N. Y. 280; Crawford *v.* West Side Bank, 100 N. Y. 50, 56; Wood *v.* Steele, 6 Wall. 80; Newman *v.* King (Ohio), 43 N. E. Rep. 683.

(*b*) This is so, though the amount is lessened, as where $500 was changed to $400. Hewins *v.* Cargill, 67 Me. 554.

(*c*) Gettysburg National Bank *v.* Chisolm, 169 Pa. St. 564. In this case the words "with interest at six per cent." were interlined.

(*d*) Rogers *v.* Vosburgh, 87 N. Y. 208; Weyman *v.* Yeomans, 84 Ill. 403; Miller *v.* Gilleland, 19 Pa. St. 119.

(*e*) Tidmarsh *v.* Grover, 1 Maule & S., 735; Bank of Ohio Valley *v.* Lockwood, 13 W. Va. 392.

(*f*) In McCaughey *v.* Smith, 27 N. Y. 39, and Brownell *v.* Winnie, 29 N. Y. 400, it was held that the addition of another name as maker, where there was but one, was not a material alteration, the additional maker being regarded as a guarantor. The statute has probably changed this rule.

(*g*) Angle *v.* Insurance Company, 92 U. S. 330; Church *v.* Howard, 17 Hun, 5; Darwin *v.* Rippey, 63 N. C. 318; Bogarth *v.* Breedlove, 39 Tex. 561.

(*h*) Whitesides *v.* Northern Bank, 10 Bush, 501.

(*i*) Weyerhauser *v.* Dun, 100 N. Y. 150. Addition of special agreement.

ARTICLE X.

BILLS OF EXCHANGE; FORM AND INTERPRETATION.

Section 210. Bill of exchange defined.
211. Bill not an assignment of funds in hands of drawee.
212. Bill addressed to more than one drawee.
213. Inland and foreign bills of exchange.
214. When bill may be treated as promissory note.
215. Drawee in case of need.

§ 210. Bill of exchange defined.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed* determinable future time a sum certain in money to order or to bearer.

Jarvis *v.* Wilson, 46 Conn. 91.

§ 211. Bill not an assignment of funds in hands of drawee.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same (*a*).

(*a*) Harris *v.* Clark, 3 N. Y. 93; Mandeville *v.* Welch, 5 Wheat. 286; Brill *v.* Tuttle, 81 N. Y. 454; Alger *v.* Scott, 54 N. Y. 14;

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* The word "or" has been omitted in the New York statute through some clerical error. See Preface.

Munger *v.* Shannon, 61 N. Y. 251. But when, for a valuable consideration from the payee, the order is drawn upon a third party and made payable out of a particular fund, then due or to become due, from him to the drawer, the delivery of the order to the payee operates as an assignment *pro tanto* of the fund, and the drawee is bound, after notice of such assignment, to apply the fund, as it accrues, to the payment of the order and to no other purpose, and the payee may, by action, compel such application. Brill *v.* Tuttle, 81 N. Y. 454, 457. An intention to make an assignment of the funds in the hands of the drawee may be inferred from the circumstances attending the delivery of the draft and the conduct of the parties. Throop Grain Cleaner Co. *v.* Smith, 110 N. Y. 83.

§ 212. **Bill addressed to more than one drawee.**—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

§ 213. **Inland and foreign bills of exchange.**—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill (*a*). Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

(*a*) Commercial Bank of Kentucky *v.* Varnum, 49 N. Y. 269; Life Insurance Company *v.* Pendleton, 112 U. S. 696; Armstrong *v.* American Ex. National Bank, 133 U. S. 433; Buckner *v.* Finley, 2 Peters, 586; Joseph *v.* Solomon, 19 Fla. 632; Phœnix Bank *v.* Hussey, 12 Pick. 483.

§ 214. **When bill may be treated as promissory note.**—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note (*a*).

(*a*) See section 17.

215. Drawee* in case of need.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment (*a*). Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

(*a*) The usual form is: "In case of need, apply to Messrs. C and D, at E." Chitty on Bills, 165.

ARTICLE XI.

Acceptance of Bills of Exchange.

Section 220. Acceptance, how made, et cetera.
221. Holder entitled to acceptance on face of bill.
222. Acceptance by separate instrument.
223. Promise to accept; when equivalent to acceptance.
224. Time allowed drawee to accept.
225. Liability of drawee retaining or destroying bill.
226. Acceptance of incomplete bill.
227. Kinds of acceptances.
228. What constitutes a general acceptance.
229. Qualified acceptance.
230. Rights of parties as to qualified acceptance.

§ 220. Acceptance; how made, et cetera.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer (*a*). The acceptance must be in writing and signed by the drawer† (*b*). It

* Error for "referee." See Preface.

† Error for "drawee." See Preface.

must not express that the drawee will perform his promise by any other means than the payment of money.

(*a*) The acceptance is a response to the direction contained in the bill, and the language of the bill and the acceptance are but parts of one entire contract in writing. Meyer *v.* Beardsley, 29 N. J. Law, 236. But this contract is regarded as a new contract. Superior City *v.* Ripley, 138 U. S. 93. The usual mode of making an acceptance is by writing the word "accepted," and subscribing the drawee's name. Byles on Bills, 190. But the drawee's signature alone is sufficient. Spear *v.* Pratt, 2 Hill, 582; Wheeler *v.* Webster, 1 E. D. Smith, 1.

(*b*) 1 Rev. Stat. N. Y. 768, section 6. The English Bills of Exchange Act, following previous English statutes (1 and 2 George IV., C. 78; 19 and 20 Victoria, C. 78) requires that the acceptance be written on the bill. The American statutes do not generally require this; and such a requirement would sometimes work inconvenience. Thus, it has been held that a bank can accept a check by telegraph, and such an acceptance has been deemed to be within the terms of a statute requiring acceptances to be in writing, North Atchison Bank *v.* Garretson, 51 Fed. Rep. 167; but to require the acceptance to be on the instrument itself would preclude the giving of an acceptance by telegraph either by a bank or by any other drawee.

§ 221. **Holder entitled to acceptance on face of bill.**—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.

1 Rev. Stat. N. Y., section 9.

§ 222. **Acceptance by separate instrument.**—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor, except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

1 Rev. Stat. N. Y., 768, section 7.

§ 223. Promise to accept; when equivalent to acceptance.—An unconditional promise in writing (*a*) to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value (*b*).

(*a*) An absolute authority to draw is equivalent to an unconditional promise to pay the draft within the statute. Ruiz *v.* Renauld, 100 N. Y. 256; Merchants' Bank *v.* Griswold, 72 N. Y. 472, 479; Barney *v.* Worthington, 37 N. Y. 112. The promise must be unconditional. Germania National Bank *v.* Tooke, 101 N. Y. 442; Shover *v.* Western Union Telegraph Co., 57 N. Y. 459, 463. But restrictions as to the time or amount do not prevent the promise from being treated as unconditional and absolute as to drafts within the limitation. Bank of Michigan *v.* Ely, 17 Wend. 508; Ulster Co. Bank *v.* McFarlan, 5 Hill, 432. It is also held that an authority given to an agent to draw "from time to time, as may be necessary in the purchase of lumber," or as "you want more funds," operates simply as an instruction to the agent, and does not, as to persons dealing with him in good faith, constitute a condition. Merchants' Bank *v.* Griswold, 72 N. Y. 472; Bank of Michigan *v.* Ely, 17 Wend. 508. The party dealing with the agent may rest upon his representation, express or implied, that the draft is in the business of the principal, or that the funds are needed, and he is protected, although it turns out that the representation is false. N. Y. & N. H. R. R. Co. *v.* Schuyler, 34 N. Y. 30; Merchants' Bank *v.* Griswold, 72 N. Y. 472. The requirement that the promise shall be in writing is wholly statutory. At common law an oral promise was sufficient. Scudder *v.* Union Nat. Bank, 91 U. S. 406; Williams *v.* Winans, 2 Gr. (N. J.) 239; Jarvis *v.* Wilson, 46 Conn. 91. A telegraphic authority is sufficient. Johnson *v.* Clark, 39 N. Y. 216; North Atchison Bank *v.* Garretson, 51 Fed. Rep. 167. A promise to accept is governed by the law of the state where it is made notwithstanding it is to be performed elsewhere. Scott *v.* Pilkington, 15 Abb. Pr. 280.

(*b*) 1 Rev. Stat. N. Y. 768, section 8.

§ 224. Time allowed drawee to accept.—The drawee is allowed twenty-four hours after presentment in

which to decide whether or not he will accept the bill (*a*); but the acceptance if given dates as of the day of presentation (*b*).

(*a*) See Byles on Bills, 182; Daniel on Neg. Inst., section 492. By statute in Massachusetts, the drawee has until two o'clock on the day following. (Public Statutes, 1882, Ch. 77, section 17.)

(*b*) There does not appear to be any direct authority on this point; the rule of the statute conforms to what is the common practice. See also statute of Massachusetts above referred to.

§ 225. **Liability of drawee retaining or destroying bill.**—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

1 Rev. Stat. N. Y. 769, section 11. The refusal referred to in the statute is an affirmative act, or such conduct as amounts to an affirmative act; and mere retention of the bill, without a demand for a return, or a dissent to the retention, and with the permission of the owner is not an acceptance. Matteson *v.* Moulton, 79 N. Y. 627.

§ 226. **Acceptance of incomplete bill.**—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

§ 227. **Kinds of acceptances.**—An acceptance is either general or qualified. A general acceptance assents

without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn (*a*).

(*a*) Where a bill is addressed to the drawee in one place, and is accepted payable in another, this is a material variation. Walker *v.* Bank of State of N. Y., 13 Barb. 636; Niagara Bank *v.* Fairman Co., 31 Barb. 403. But a bill addressed generally to a drawee in a city may be accepted payable at a particular bank in that city. Troy City Bank *v.* Lanman, 19 N. Y. 477; Meyers *v.* Standart, 11 Ohio St. 29.

§ 228. **What constitutes a general acceptancy.**—An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

Before the enactment of the 1 and 2 George IV., c. 78, it was a point much disputed whether, if a bill payable generally was accepted payable at a particular place, such an acceptance was a qualified one. Byles on Bills, 194. The House of Lords finally held that an acceptance payable at a particular place was a qualified acceptance, rendering it necessary, in an action against the acceptor, to aver and prove presentment at such place. Rome *v.* Young, 2 Brod. & Bing. 165; 2 Bligh, 391. This led to the passage of the statute above mentioned, called Sergeant Onslow's act, which provided that an acceptance payable at a particular place should be deemed a general acceptance unless expressed to be payable there "only and not otherwise or elsewhere." In the United States the weight of authority has been contrary to the decision of the House of Lords, and in favor of the rule as stated in this section. Wallace *v.* McConnell, 13 Peters, 136. See also note to section 130.

§ 229. **Qualified acceptance.**—An acceptance is qualified which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all.

§ 230. **Rights of parties as to qualified acceptance.**—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance (*a*). Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

(*a*) An agent for collection, as, for example, a bank, has no authority to receive anything short of an explicit and unqualified acceptance. Walker *v.* New York State Bank, 9 N. Y. 582.

ARTICLE XII.

Presentment of Bills of Exchange for Acceptance.

Section 240. When presentment for acceptance must be made.

241. When failure to present releases drawer and indorser.

242. Presentment; how made.

Section 243. On what days presentment may be made.
244. Presentment; where time is insufficient.
245. When presentment is excused.
246. When dishonored by non-acceptance.
247. Duty of holder where bill not accepted.
248. Rights of holder where bill not accepted.

§ 240. When presentment for acceptance must be made.—Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument (*a*); or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

(*a*) Although when a bill is made payable at a day certain, as at a fixed time after its date, presentment for acceptance before that time is not necessary in order to charge the drawer or indorsers, yet where a bank receives such a bill for collection, its duty is to present the bill for acceptance without delay. For it is to the owner's interest that the bill should be so accepted, as only by accepting it does the drawee become bound to pay it, and until such acceptance the owner has for his debtor only the drawer, and the step is one which a prudent man of business, ordinarily careful of his own interests, would take for his protection. Allen *v.* Suydam, 17 Wend. 368.

§ 241. When failure to present releases drawer and indorser.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either

present it for acceptance or negotiate it within a reasonable time (*a*). If he fails to do so, the drawer and all indorsers are discharged.

(*a*) Robinson *v.* Ames, 20 Johns. 146 ; Gowan *v.* Jackson, 20 Johns. 176 ; Wallace *v.* Agry, 4 Mason, 333 ; Prescott Bank *v.* Coverly, 7 Gray, 217 ; Walsh *v.* Dort, 23 Wis. 334 ; Phœnix Ins. Co. *v.* Allen, 11 Mich. 30 ; Goupy *v.* Harden, 7 Taunt. 397.

§ 242. **Presentment ; how made.**—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour (*a*), on a business day, and before the bill is overdue, to the drawer* or some person authorized to accept or refuse acceptance on his behalf (*b*) ; and

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all (*c*), unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only ;

2. Where the drawee is dead, presentment may be made to his personal representative (*d*) ;

3. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

(*a*) Cayuga County Bank *v.* Hunt, 2 Hill, 635.

(*b*) Byles on Bills, 182. The holder may require the production by the agent of clear and explicit authority from his principal to accept in his name, and without its production may treat the bill as dishonored. Daniel on Negotiable Instruments, section 487.

(*c*) But if one of the drawees accepts he will be bound by his acceptance. Smith *v.* Melton, 133 Mass. 369.

(*d*) Presentment in such case is not necessary. See section 245. Indeed, an executor or administrator has no authority to

* Error for "drawee." See Preface.

bind the estate of the decedent by an acceptance. Schmittler *v.* Simon, 101 N. Y. 554. But as it will in most cases be convenient to have the bill duly protested, it is well to have some one designated to whom presentment can be made.

§ 243. **On what days presentment may be made.**—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two * and eighty-five † of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

§ 244. **Presentment where time is insufficient.**—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

§ 245. **Where presentment is excused.**—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead (*a*), or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

2. Where after the exercise of reasonable diligence, presentment cannot be made;

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* This is the number as it appears in the draft as published by the Commissioners on Uniformity of Laws. The corresponding number in the New York Act is 132. See Preface.

† Should be 145. See note above.

3. Where although presentment has been irregular, acceptance has been refused on some other ground.

(*a*) Prior to the statute there was some doubt as to the proper course in this case. See Daniel on Negotiable Instruments, section 1178. But as the personal representative cannot find the estate by an acceptance (Schmittler *v.* Simon, 101 N. Y. 554), presentment would be but an idle form.

§ 246. **When dishonored by non-acceptance.**—A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

§ 247. **Duty of holder where bill not accepted.**—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

§ 248. **Rights of holder where bill not accepted.**—When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary (*a*).

(*a*) Sterry *v.* Robinson, 1 Day (Conn.), 11.

ARTICLE XIII.

Protest of Bills of Exchange.

Section 260. In what cases protest necessary.
261. Protest; how made.
262. Protest; by whom made.
263. Protest; when to be made.
264. Protest; where made.
265. Protest both for non-acceptance and non-payment.
266. Protest before maturity where acceptor insolvent.
267. When protest dispensed with.
268. Protest; where bill is lost, et cetera.

§ 260. **In what cases protest necessary.**—Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged (*a*). Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary (*b*).

(*a*) Commercial Bank *v.* Varnum, 49 N. Y. 269, 275; Halliday *v.* McDougall, 20 Wend. 81; Dennistoun *v.* Stewart, 17 How. (U. S.) 606; Phœnix Bank *v.* Hussey, 12 Pick. 483.

(*b*) See sections 189 and 213.

§ 261. **Protest; how made.**—The protest must be annexed to the bill, or must contain a copy thereof, and

must be under the hand (*a*) and seal (*b*) of the notary making it, and must specify:

1. The time and place of presentment;

2. The fact that presentment was made and the manner thereof;

3. The cause or reason for protesting the bill;

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(*a*) The signature of the notary may be printed. Bank of Cooperstown *v.* Woods, 28 N. Y. 561.

(*b*) Donegan *v.* Wood, 49 Ala. 251. In other cases it has been held that the official signature is all that is required. Huffuker *v.* National Bank, 12 Bush. 293. As to the notary's certificate as evidence, see Code of Civil Procedure, N. Y., sections 923–925.

§ 262. **Protest; by whom made.**—Protest may be made by:

1. A notary public (*a*); or

2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses (*b*).

(*a*) It would seem that, in the absence of any custom or usage on the subject, the presentment and demand must be made by the notary in person. Commercial Bank *v.* Varnum, 49 N. Y. 269, 275. A notary who is an officer of a bank may legally protest paper belonging to the bank. Nelson *v.* First National Bank, 69 Fed. Rep. 798; 16 C. C. A. 425. And though he is also a stockholder in the bank. Moreland's Assignee *v.* Citizens' Savings Bank (Ky.), 30 S. W. Rep. 19. And it has been held that the cashier of a bank who is a notary may legally protest his own note which has been discounted by the bank. Dykman *v.* Northridge, 1 App. Div. 26.

(*b*) Todd *v.* Neal's Administrator, 49 Ala. 273.

§ 263. **Protest; when to be made.**—When a bill is protested, such protest must be made on the day of its

dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting (*a*).

(*a*) The protest should be commenced, at least (and such an incipient protest is called noting), on the day on which acceptance or payment is refused; but it may be drawn up and completed at any time before the commencement of the suit, or even before or during the trial, and ante-dated accordingly. Byles on Bills, 257.

§ 264. **Protest; where made.**—A bill must be protested at the place where it is dishonored (*a*), except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary (*b*).

(*a*) See Daniel on Neg. Inst., section 935; Byles on Bills, 217.

(*b*) 3 William IV. Ch. 98; Daniel on Neg. Inst., section 935; Byles on Bills, 258.

§ 265. **Protest both for non-acceptance and non-payment.**—A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

§ 266. **Protest before maturity where acceptor insolvent.**—Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

§ 267.—**When protest dispensed with.**—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by cir-

cumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

§ 268. **Protest where bill is lost, et cetera.**—Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof (*a*).

(*a*) Hinsdale *v.* Miles, 5 Conn. 331. Loss of the instrument does not excuse demand and protest. Daniel on Negotiable Instruments, section 1464. See also section 245.

ARTICLE XIV.

Acceptance of Bills of Exchange for Honor.

Section 280. When bill may be accepted for honor.
281. Acceptance for honor; how made.
282. When deemed to be an acceptance for honor of the drawer.
283. Liability of acceptor for honor.
284. Agreement of acceptor for honor.
285. Maturity of bill payable after sight; accepted for honor.
286. Protest of bill accepted for honor, et cetera.
287. Presentment for payment to acceptor for honor; how made.
288. When delay in making presentment is excused.
289. Dishonor of bill by acceptor for honor.

§ 280. **When bill may be accepted for honor.**—Where a bill of exchange has been protested for dishonor by

non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person* whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Byles on Bills, 262–266.

§ 281. **Acceptance for honor; how made.**—An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

§ 282. **When deemed to be an acceptance for honor of the drawer.**—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

§ 283. **Liability of acceptor for honor.**—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

§ 284. **Agreement of acceptor for honor.**—The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

* The word "for" omitted. See Preface.

§ 285. **Maturity of bill payable after sight; accepted for honor.**—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

§ 286. **Protest of bill accepted for honor, et cetera.**—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

§ 287. **Presentment for payment to acceptor for honor; how made.**—Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity;

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.*

"Doubts having arisen as to the day when the bill should be again presented to the acceptor for honor, or referee in case of need, for payment, the 6 and 7 Will. 4, c. 58, enacts, that it shall not be necessary to present, or in case the acceptor for honor or referee live at a distance, to forward for presentment, till the day following that on which the bill becomes due." Byles on Bills, 263.

§ 288. **When delay in making presentment is excused.**

* This is the number in the draft as published by the Commissioners on Uniformity of Laws. The corresponding number in the New York Act is 175. See Preface.

—The provisions of section eighty-one * apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

§ 289. **Dishonor of bill by acceptor for honor.**—When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

ARTICLE XV.

Payment of Bills of Exchange for Honor.

Section 300. Who may make payment for honor.
301. Payment for honor; how made.
302 Declaration before payment for honor.
303. Preference of parties offering to pay for honor.
304. Effect on subsequent parties where bill is paid for honor.
305. Where holder refuses to receive payment supra protest.
306. Rights of payer for honor.

§ 300. **Who may make payment for honor.**—Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Byles on Bills, 267–269 ; Daniel on Neg. Inst., section 1254.

§ 301. **Payment for honor; how made.**—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by

* Should be 141. See note on preceding page.

a notarial act of honor which may be appended to the protest or form an extension to it.

Byles on Bills, 267; Daniel on Neg. Inst., section 1258. A stranger to the drawer and indorser of a non-accepted bill may intervene supra protest, to pay the same for the honor of the indorser or drawer. Konig *v.* Bayard, 1 Pet. 250. And it is no objection to this intervention that it has been done at the request and under the guarantee of the drawer who had refused acceptance or payment. (*Id.*)

§ 302. **Declaration before payment for honor.**—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

§ 303. **Preference of parties offering to pay for honor.**—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

§ 304. **Effect on subsequent parties where bill is paid for honor.**—Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Daniel on Neg. Inst., section 1255.

§ 305. **Where holder refuses to receive payment supra protest.**—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

§ 306. Rights of payer for honor.—The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE XVI.

BILLS IN A SET.

Section 310. Bills in sets constitute one bill.
311. Rights of holders where different parts are negotiated.
312. Liability of holder who indorses two or more parts of a set to different persons.
313. Acceptance of bills drawn in sets.
314. Payment by acceptor of bills drawn in sets.
315. Effect of discharging one of a set.

§ 310. Bills in sets constitute one bill.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

Byles on Bills, 387 ; Daniel on Neg. Inst., section 113 ; Durkin *v.* Cranston, 7 Johns. 442.

§ 311. Rights of holders where different parts are negotiated.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Byles on Bills, 389.

§ 312. **Liability of holder who indorses two or more parts of a set to different persons.**—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Holdsworth *v.* Hunter, 10 C. B. 449; Byles on Bills, 389.

§ 313. **Acceptance of bills drawn in sets.**—The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Holdsworth *v.* Hunter, 10 C. B. 449; Byles on Bills, 389.

§ 314. **Payment by acceptor of bills drawn in sets.**—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Byles on Bills, 389.

§ 315. **Effect of discharging one of a set.**—Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

Byles on Bills, 388.

ARTICLE XVII.

Promissory Notes and Checks.

Section 320. Promissory note defined.
321. Check defined.
322. Within what time a check must be presented.
323. Certification of check; effect of.
324. Effect where holder of check procures it to be certified.
325. When check operates as an assignment.

Section 320. Promissory note defined.—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer (*a*). Where a note is drawn to the maker's own order, it is not complete until indorsed by him (*b*).

(*a*) The effect of this section is probably to make a change in the law of New York as regards the presumption of consideration in the case of non-negotiable notes. The terms of the former New York statute included a note payable to a person named therein without words of negotiability. Carnwright *v.* Gray, 127 N. Y. 92. But as that statute has been repealed, and as the provisions of the Negotiable Instrument Law apply only to negotiable promissory notes, it will be necessary hereafter to prove consideration in actions upon non-negotiable notes. The rules on the subject have differed in the different States. See Daniel on Negotiable Instruments, section 163. In Connecticut the act has made no change in the law; for the rule in that State has been that a non-negotiable note does not import a consideration. Bristol *v.* Warner, 19 Conn. 17.

(*b*) Under the former statute in New York the indorsement of the maker was not necessary. Irving National Bank *v.* Alley, 79 N. Y. 536. Where a promissory note payable to the order of the maker is indorsed by him, the indorsement does not change or affect the nature and character of his liability. Madison Square Bank *v.* Pierce, 137 N. Y. 444.

§ 321. **Check defined.**—A check is a bill of exchange drawn on a bank (*a*) payable on demand (*b*). Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

(*a*) One of the characteristics which distinguish a check from a bill of exchange is that a check is always drawn on a bank or banker. Harris *v.* Clark, 3 N. Y. 93, 115; In the Matter of Brown, 2 Story's Rep. 502. See also Bull *v.* Bank of Kasson, 123 U. S. 105; Rogers *v.* Durant, 140 U. S. 298; Espy *v.* Bank of Cincinnati, 18 Wall. 620; Merchants' Bank *v.* State Bank, 10 Wall. 604; Chapman *v.* White, 6 N. Y. 412; Barker *v.* Anderson, 21 Wend. 373; Murray *v.* Judah, 6 Cow. 484; Cruger *v.* Armstrong, 3 Johns. 5; Ridgeley Bank *v.* Patton, 109 Ill. 484; Harrison *v.* Nicollet Nat. Bank, 41 Minn. 489; Northwestern Coal Co. *v.* Bowman, 69 Iowa, 152; Planters' Bank *v.* Keese, 7 Heisk. 200; Blair *v.* Wilson, 28 Grat. 170; Hopkinson *v.* Forster, L. R. 18 Eq. 74.

(*b*) There has been some conflict in the decisions as to whether a draft upon a bank not payable immediately was a check or bill of exchange. The latter view was adopted in New York. Bowen *v.* Newell, 8 N. Y. 190; 13 N. Y. 390. To the same effect also were the following cases: Ivory *v.* Bank of the State, 36 Mo. 475; Harrison *v.* Nicollet National Bank, 41 Minn. 488; Georgia National Bank *v.* Henderson, 46 Ga. 496; Minturn *v.* Fisher, 4 Cal. 36; Morrison *v.* Bailey, 5 Ohio St. 13. *Contra:* Champion *v.* Gordon, 70 Pa. St. 474; Westminster Bank *v.* Wheaton, 4 R. I. 30; *In re* Brown, 2 Story, 502. In all of these cases the particular question presented was whether the instrument was entitled to grace. But now that grace has been abolished the distinction is of little, if any, practical importance.

§ 322. Within what time a check must be presented.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

The holder's laches in presenting a check for payment constitutes no defense in an action against the drawer unless he is damaged by the delay, and then only to the extent of his loss. A check purports to be made upon a deposit to meet it, and presupposes funds of the drawer in the hands of the drawee. But if the drawer has no such funds at the time of drawing his check, or subsequently withdraws them, he commits a fraud upon the payee, and can suffer no loss or damage from the holder's delay in respect to presentment or notice. In such case he is liable, and cannot insist upon a formal demand or notice of non-payment. First National Bank of Portland *v.* Linn County National Bank (Oregon), 47 Pac. Rep. 615; Industrial Bank of Chicago *v.* Bower (Ill.), 46 N. E. Rep. 413. For instances of unreasonable delay see Industrial Trust, Title and Savings Co. *v.* Weakley, 103 Ala. 458; Gifford *v.* Hardell, 88 Wis. 538; First National Bank of Wymore *v.* Miller, 43 Neb. 791; Comer *v.* Dufour, 95 Ga. 376; Grange *v.* Reigh (Wis.), 67 N. W. Rep. 1130; Western Wheeled Scraper Co. *v.* Sadilek (Neb.), 69 N. W. Rep. 765; Gregg *v.* Beane (Vt.), 37 Atl. Rep. 248; Holmes *v.* Roe, 62 Mich. 199. For instances of presentment in due time, see Loux *v.* Fox, 171 Pa. St. 68; Willis *v.* Finley, 173 Pa. St. 28; First Nat. Bank *v.* Buckhannon Bank, 80 Md. 475; Lloyd *v.* Osborne (Wis.), 65 N. W. Rep. 859. But while, as between the holder and drawer of a check, presentment may be made at any time, and delay in presentment does not discharge the drawer, unless loss has resulted to him, a different rule obtains as between holder and indorser. The holder, on accepting the check, assumes the obligation to present the same for payment within the time prescribed by law, and if payment is refused to give notice of non-payment. A failure to do this discharges the indorser from liability as such irrespective of any question of loss or injury. Carroll *v.* Swift, 128 N. Y. 19. It is not clear whether the death of the drawer revokes the authority of the bank to pay a check. There is no decision directly in point,

and the views of the text writers differ. To meet the difficulty, the original draft of the Negotiable Instruments Law submitted to the commissioners contained a provision (which was taken from the statute of Massachusetts) as follows : "The death of the drawer does not operate as a revocation of the authority to pay a check, if the check is presented for payment within ten days from the date thereof." But it was thought by the conference of commissioners that this would be objected to in some of the States because of the effect it might have on the estates of decedents.

§ 323. **Certification of check; effect of.**—Where a check is certified by the bank on which it is drawn the certificate* is equivalent to an acceptance (*a*).

(*a*) See Merchants' Bank *v.* State Bank, 10 Wall. 648 ; Cooke *v.* State Nat. Bank, 52 N. Y. 96 ; Farmers' and Merchanics' Bank *v.* Butchers' and Drovers' Bank, 16 N. Y. 125. The certification does not admit the genuineness of the indorser's signature. First Nat. Bank *v.* Northwestern Nat. Bank, 152 Ill. 296. As to the liabilities incurred, see section 112.

§ 324. **Effect where the holder of check procures it to be certified.**—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

See Minot *v.* Russ, 156 Mass. 458 ; Metropolitan Bank *v.* Jones, 137 Ill. 634 ; Meridian Nat. Bank *v.* First Nat. Bank (Ind.), 33 N. E. Rep. 247 ; First Nat. Bank *v.* Leach, 52 N. Y. 350. But where the check is certified when delivered it does not constitute payment any more than an uncertified check ; and if it is presented promptly and dishonored, the loss must fall upon the drawer. Born *v.* First Nat. Bank, 123 Ind. 78 ; Cincinnati Oyster & Fish Co. *v.* Nat. Lafayette Bank, 51 Ohio St. 106.

§ 325. **When check operates as an assignment.**—A check of itself does not operate as an assignment of

* Through a clerical error the word "certificate" has been used in the New York statute for "certification." See Preface.

any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

As to this there is considerable conflict in the authorities. The rule adopted in the act is supported by the weight of authority. See Bank *v.* Millard, 10 Wall. 152 ; Bank *v.* Schuler, 120 U. S. 511 ; Florence Mills Co. *v.* Brown, 124 U. S. 385 ; First Nat. Bank *v.* Whitman, 94 U. S. 343, 344 ; St. L. & S. F. Ry. Co. *v.* Johnston, 133 U. S. 566 ; Attorney-General *v.* Continental Life Insurance Co., 71 N. Y. 325, 330 ; First Nat. Bank of Union Mills *v.* Clark, 134 N. Y. 368 ; O'Connor *v.* Mechanics' Bank, 124 N. Y. 324 ; Covert *v.* Rhodes, 48 Ohio St. 66 ; Cincinnati H. & D. R. R. Co. *v.* Metropolitan Nat. Bank (Ohio), 42 N. E. Rep. 700 ; Pickle *v.* People's Nat. Bank, 88 Tenn. 380 ; Boetcher *v.* Colorado Nat. Bank, 15 Col. 16 ; Hopkinson *v.* Foster L. R., 18 Eq. 74. *Contra:* Fonner *v.* Smith, 31 Neb. 107 ; Munn *v.* Burch, 25 Ill. 35 ; Bank *v.* Patton, 109 Ill. 479, 485 ; Doty *v.* Caldwell (Tex.), 38 S. W. Rep. 1025 ; Nat. Bank of America *v.* Nat. Bank of Ill. (Ill.), 45 N. E. Rep. 968. But while the mere making and delivery of a check in the ordinary course of business does not operate as an assignment of the fund, it is yet competent for the parties to create such an assignment by a clear agreement or understanding, oral or otherwise, in addition to the giving of the check that such shall be the effect of the transaction. Fourth Street National Bank *v.* Yardley, 165 U. S. 634 ; Throop Grain Cleaner Co. *v.* Smith, 110 N. Y. 83, 88.

ARTICLE XVIII.

NOTES GIVEN FOR A PATENT RIGHTS AND FOR A SPECULATIVE CONSIDERATION.

Section 330. Negotiable instruments given for patent rights.

331. Negotiable instruments given for a speculative consideration.

Section 332. How negotiable bonds are made non-negotiable.

§ 330. Negotiable instruments given for patent rights.—A promissory note or other negotiable instrument, the consideration of which consists wholly or partly of the right to make, use or sell any invention claimed or represented by the vendor at the time of sale to be patented, must contain the words "given for a patent right" prominently and legibly written or printed on the face of such note or instrument above the signature thereto; and such note or instrument in the hands of any purchaser or holder is subject to the same defenses as in the hands of the original holder; but this section does not apply to a negotiable instrument given solely for the purchase price or the use of a patented article.

Laws N. Y. 1877, Ch. 65, section 1. This section is not in contravention of the Constitution of the United States and the acts of Congress which secure to a patentee for a limited time "the full and exclusive right and liberty of making, using and vending to others to be used" his invention or discovery. Herdie *v.* Roessler, 109 N. Y. 127; Tod *v.* Wick, 36 Ohio St. 370; Haskell *v.* Jones, 86 Pa. St. 173; Breckhill *v.* Randall, 102 Ind. 528; New *v.* Walker, 108 Ind. 365. If the note does not contain the statement required by this section it is unenforcible between the parties; but, if negotiable paper, it is valid in the hands of a holder in due course. New *v.* Walker, 108 Ind. 365; Kness *v.* Holbrook (Ind.) 44 N. E. Rep. 363.

§ 331. Negotiable instrument for a speculative consideration.—If the consideration of a promissory note or other negotiable instrument consists in whole or in part of the purchase price of any farm product, at a price greater by at least four times than the fair market value of the same product at the time, in the locality, or of

the membership and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at a price greater by four times than the market value of the same product at the time in the locality, the words, "given for a speculative consideration," or other words clearly showing the nature of the consideration, must be prominently and legibly written or printed on the face of such note or instrument above the signature thereof; and such note or instrument, in the hands of any purchaser or holder, is subject to the same defenses as in the hands of the original owner or holder.

Laws N. Y. 1874, Ch. 262, section 1.

§ 332. **How negotiable bonds are made non-negotiable.** —The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer), heretofore or hereafter issued in and payable in this State, but not registered in pursuance of any State law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon, that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.

Laws N. Y. 1871, Ch. 81; Laws N. Y. 1873, Ch. 595.

ARTICLE XIX.

Laws Repealed; When to Take Effect.

Section 340. Laws repealed.
341. When to take effect.

§ 340. **Laws repealed.**—The laws or parts thereof specified in the schedule hereto annexed are hereby repealed.

§ 341. **When to take effect.**—This chapter shall take effect on the first day of October, eighteen hundred and ninety-seven.

See note to section 6.

SCHEDULE OF LAWS REPEALED.*

Revised Statutes.	Sections.	Subject matter.
R. S., pt. II., ch. 4, tit. II.....	All.....	Bills and notes.

Laws of	Chapter.	Sections.	Subject matter.
1835...	141....	All....	Notice of protest; how given.
1857...	416....	All....	Commercial paper.
1865...	309....	All....	Protest of foreign bills, etc.
1870...	438....	All....	Negotiability of corporate bonds; how limited.
1871...	84....	All....	Negotiable bonds; how made non-negotiable.

* This schedule comprises only the New York statutes.

Laws of	Chapter.	Sections.	Subject matter.
1873...	595....	All....	Negotiable bonds; how made negotiable.
1877...	65....	1, 3....	Negotiable instruments given for patent rights.
1887...	461....	All....	Effect of holidays upon payment of commercial paper.
1888...	229....	All....	One hundredth anniversary of the inauguration of George Washington.
1891...	262....	1....	Negotiable instruments given for a speculative consideration.
1894...	607....	All....	Days of grace abolished.

Laws of New York, 1897, chapter 613.

AN ACT to amend the Penal Code, relative to violation of The Negotiable Instruments Law.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The penal code is hereby amended by inserting at the end of title twelve the following new sections:

§ 384m. **Notes given for patent rights.**—A person who takes, sells or transfers a promissory note or other negotiable instrument, knowing the consideration of such note or instrument to consist in whole or in part of the right to make, use or sell any patent invention or inventions, or any invention claimed or represented to be patented, without having the words "given for a patent right" written or printed legibly and prominently on the face of such note or instrument above the signature thereto, is guilty of a misdemeanor.

§ 384n. **Notes given for a speculative consideration.**—A person who takes, sells or transfers a promissory note or other negotiable instrument, knowing the consideration of such note or instrument to consist in whole or in part of the purchase price of any farm product at a price greater by four or more times than

the fair market value of the same product at the time in the locality, or in which the consideration shall be in whole or in part, membership of and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at such rate, without having the words "given for a speculative consideration," or other words clearly showing the nature of the consideration prominently and legibly written or printed on the face of such note or instrument above the signature thereof is guilty of a misdemeanor.

§ 2. Section two of chapter sixty-five of the laws of eighteen hundred and seventy-seven, and section two of chapter two hundred and sixty-two of the laws of eighteen hundred and ninety-one, are hereby repealed.

§ 3. This act shall take effect the first day of October, eighteen hundred and ninety-seven.

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